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THE

# MEMORIAL

OF

## SIR ALEXANDER SETON, BARONET,

TO

THE HONORABLE

## COURT OF DIRECTORS,

OF THE

*UNITED COMPANY OF MERCHANTS OF ENGLAND,*

*TRADING TO THE EAST INDIES.*

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CALCUTTA.

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PRINTED AT THE MIRROR PRESS.

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THE MEMORIAL *of Sir* ALEXANDER SETON, *Baronet, to the Honorable* COURT *of* DIRECTORS, *of the* UNITED COMPANY *of* MERCHANTS *of* ENGLAND, *Trading to the* EAST INDIES.

HUMBLY SHEWETH,

THAT, in the year 1790, your Memorialist became a Covenanted Servant of the Honorable Company; and that after having filled various subordinate situations in India, he was in the month of January 1803, appointed to the office of Judge and Magistrate of the district of Tirhoot; that on the 23d of March 1807, your memorialist was suspended; and on the 8th of January 1808, removed from that office, by authority of the Right Honorable the Governor General in Council; that by the same authority your memorialist was on the 10th of June 1808, appointed

Collector of Shahabad, which office he has now the honor to fill under the Honorable Company.

2.—Whilst your memorialist made India his residence, he did not think himself justified, as a servant of the honorable company in refusing to serve his honorable employers, in any situation, to which their government in India was pleased to nominate him; but in accepting of the office of collector; which he now holds, it was well understood, that he did not preclude himself from appealing to your honorable court, for relief against a sentence, by which your memorialist was not only deprived, without hearing or trial, of the office of judge and magistrate and of the rank and emoluments attached to it, but declared in terms to be a person incapable and unfit again to be entrusted with the duties of that high and honorable station.

3.—The appeal which your memorialist now makes to the superior authority of your honorable court, he feels to be a justice due, not only to his own character, on which the gravest imputation has thus been cast, but also to that honorable service, in which the best part of his life has been spent, and whose essential interests he conceives to be identified with his case.

4.—Before entering into a detail of the grievances your memorialist has to complain of, a few remarks on the state in which he found the district of

Tirhoot

Tirhoot when committed to his charge, will help to throw light on the origin of that conspiracy against the honor and reputation of your memorialist, which has since been so powerfully and successfully abetted.

5.—When your memorialist took charge of the district of Tirhoot, the government revenue had fallen in arrear, and the collector of the district had found it necessary, to enforce the regulations of the honorable company, by the sale of the lands of the defaulters, for payment of their deficiencies of revenue. But in attempting to give possession to the purchasers at the public sales, his officers were opposed by force; and it became necessary to have recourse to the authority of the magistrate. The authority of the magistrate, was not however always effectual;—the process of the court was generally resisted and the officers who attempted to serve it, attacked, and beaten off. The former owners, with their armed adherents, continued to hold forcible possession of the lands, which had been forfeited to government by their default; and thus set at defiance all legal authority. Affrays, attended with bloodshed, accompanied the transfer of property made under the solemn sanction of the laws and regulations of the company. The prevalency of resistance to the court's process was represented by your memorialist to the nizamut adawlut in a letter dated the 27th of July 1804.

6.—Whilst your memorialist was employed in discharging the different duties of his office, and particularly in repressing this system of outrage, and reducing the district to the controul of law, he learnt, that four persons of the names of Doonda Sing, Sree Govind Sing, Bhaugwunt Sing, and Huldhull Sing, had presented petitions to the provincial court of appeal of Patna, charging your memorialist with the corrupt receipt of money in the execution of his office.

7.—Doonda Sing and Govind Sing had been committed by your memorialist on a charge of murder, originating in a dispute of the nature above alluded to, a charge preferred against them upon oath, but of which upon their trial before the court of circuit they were acquitted. Bhaugwunt Sing had been accused of the same crime, and Huldhull Sing had been tried and convicted by your memorialist, and also by the Patna provincial court, for having resisted the process of the magistrate and beaten and wounded the officers who had gone to serve it. Numerous suits, both civil and criminal, had been instituted, in the zillah court of Tirhoot against the three first of these persons, and particularly against Doonda Sing, who had been a leading actor in the lawless scenes which have been described. To subtract themselves from the jurisdiction and authority of the judge and magistrate of the district, was plainly the object of their petitions to the court of appeal, and in this object they succeeded.

8.—On the petition of Doonda Sing, the provincial court issued a precept to your memorialist, prohibiting him from proceeding in any of the suits instituted against Doonda Sing, in the criminal court of Tirhoot, until he should have procured, and given security, for prosecuting his charge against your memorialist. This, as it will hereafter appear, he never accomplished, whilst by means of the above order, he resided for many months in the district of Tirhoot, exempt from all legal authority, until the repeated outrages committed by him and his armed followers, compelled your memorialist to take upon himself the responsibility, of interposing the magisterial power, to restore tranquillity, and to protect the lives and property of those committed to his charge.

9.—The petitions against your memorialist had been presented at Patna, in the month of December 1805. The line of duty, prescribed in such a case, your memorialist humbly conceives, the judges of the court of appeal could not well have misunderstood. If ever a regulation passed the supreme government in India, which afforded no room for questions of doubtful construction, and which admitted of none other, as it seems to your memorialist, than a wilful perversion of its sense and meaning, it is the 5th Regulation of 1793, in its Section 10th.—" If " any person shall charge the judge of a zillah or city " court, before the provincial court of appeal of the " division, with corruption in opposition to his oath, " the provincial court is to *receive* the charge, and " forward

" forward it to the court of sudder dewanny adaw-
" lut, provided the complainant shall *previously make*
" *oath*, to the truth of the charge (or subscribe the
" required declaration, if he shall be of the descripti-
" on of persons whom the court is empowered to ex-
" empt from making oath) and *give security*, in
" whatever sums the court may judge proper, to ap-
" pear and prosecute the charge, when required.
" Unless the complainant shall take the oath, or sub-
" scribe the above mentioned declaration, *and give*
" *the required security*, the court is *not* to *receive* the
" charge."—There could be no pretence, nor was any such set up, that the petitioners in question, were persons of a rank or description that could entitle them to the exemption from making oath;—yet, although they did *not* make oath, and did *not* give security, the provincial court of appeal for the division of Patna *did* receive their petitions, and *did* forward the same to the court of sudder dewanny adawlut,

10.—Your memorialist has already observed, that the petitions against him were presented to the court of appeal at Patna, in the month of December 1805. Your memorialist allowed three months to elapse, before he made any inquiry of that court, whether or not, the petitioners had complied with the terms of the above regulation, so as to justify the court of appeal, in receiving their petitions. It was not until the 14th of March 1806, that your memorialist addressed the court of appeal, requesting to be furnished with

copies

copies of the petitions against him. It was time, as your memorialist submits, that such a charge should be disposed of, in one way or another. If the court of appeal had acted as a grand jury, three months could not have been required either to throw out the bill, which had been presented to them, or to find it. But in truth, the functions of that court were purely ministerial, and those of the simplest kind. They had nothing more to do, than swear a party to an affidavit, and hold to bail. In vain, however, did your memorialist repeatedly solicit that court, in vain did he solicit the court of sudder dewanny adawlut, and the governor general in council, that *some* proceeding might be had, on the subject of those petitions. At length, on the 31st of May 1806, the court of sudder dewanny adawlut, after having corresponded with the court of appeal at Patna, made a report to government, by which it appeared that, although, subsequently to the receiving of their petitions, the petitioners had sworn to their truth, not one of them had, up to that day, given the security required by the 10th section, of regulation 5th, of 1793.

11.—In their letter to government of the above date, the court of sudder dewanny adawlut are pleased to say, that the provincial court had acted in strict observance of the rule prescribed by the regulation in question, and that "they could not but consider the "application of the zillah judge to be provided with "a copy of the complaints preferred against him, for "the avowed purpose of taking measures to bring the

 "fabricators

" fabricators or those concerned, to public punishment " before any order had passed on the *plaints received*, " both premature and irregular." How, " in strict " observance" of the 5th regulation of 1793, section 10th, the plaints in question could be *received* at all, without the security which that regulation most strictly requires to be *previously* given, your memorialist confesses himself at a loss to discover; nor can he well see, what there would have been, (taking the case to be as assumed by the court of sudder dewanny adawlut) either premature or irregular, in your memorialist, to have entertained and avowed the purpose of bringing the fabricators of those petitions to justice. Those petitions your memorialist submits, were either legal accusations against him, which ought to have been legally followed up and disposed of, or your memorialist had a right to consider them as false and infamous libels on his character, the fabricators of which, it was the right and the duty of your memorialist, (as he humbly insists) to bring to justice.

12.—The court of sudder dewanny adawlut in the 4th paragraph of their report, proceed thus— " The same remark is applicable to the frequent re- " quisitions of the zillah judge, for the immediate " dismissal of the charges preferred against him, in " consequence of the security, given by the com- " plainants being reported insufficient, and in urging " his objections to the proceedings of the provincial " court, on this point, Sir Alexander Seton appears " to have lost sight, both of his relative situation as " the

" the party accused, and of the respect due from " him as zillah judge to a superior court." With respect to the last part of this charge, your memorialist is not sensible, that there was any thing, in the mode of his address to the court of appeal, which could be deemed disrespectful. The object and purpose of that address was simply to require of them, to conform to the regulations, to which your memorialist, and that court, and the court of sudder dewanny adawlut, and the governor general in council, are equally subject. The application was not made by your memorialist as zillah judge, but as party accused. As party accused, your memorialist has yet to learn, that it would have been either irregular or premature in him, to have required the dismissal of charges irregularly preferred, and prematurely received.

13.—But, in fact, your memorialist never did demand the dismissal of those charges. In his letter to the court of appeal of the 26th of April, he expressed himself thus—" I trust the Patna provincial " court will be pleased to pass a decision upon the " petitions, either that they are received, or not re- " ceived, and grant me copies of them," and in other letters to the like effect. It mattered little to your memorialist, whether the court had received the petitions or rejected them. All that he desired was, that they would officially inform him, what they had done; that he might know, whether the court meant

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to act, by receiving the petitions, or enable your memorialist to act, by *not* receiving them. It was indifferent to your memorialist, by what mode, or by what hand, the brand of perjury was to be affixed on Doonda Sing and his associates. It was not equally indifferent to your memorialist, that charges of judicial corruption should for months, be entertained against him, by a superior court, without giving to your memorialist the means of defending himself in any way against them.

14.—The court of appeal have endeavoured to distinguish the *retaining* of a petition, from the *receiving* of it; they have said, that the petitions were not *received*, but *retained* only by the court. This distinction your memorialist does not well comprehend. It is easy to conceive, that a thing may or may not be retained after it has been received; but how a thing can be retained *before* it is received, is not quite so obvious. The court of sudder dewanny adawlut shew no anxiety to support this distinction, for they admit, that the plaints or petitions had been *received* by the court of appeal. They admit further that security had not been taken; and they *conclude*, by asserting, that the court of appeal had acted in "strict observance" of the regulation.

15.—The fifth paragraph of the report of the sudder dewanny adawlut of the 31st of May, is in these words—"With respect to the charges preferred "by Doonda Sing, Govind Sing, Bhaugwunt Sing, and

" Huldhull Sing, it seems highly improbable, that, as " far as they relate personally to Sir Alexander Se- " ton, they can have any foundation, but as they " have been sworn to, and as they expressly charge " the judge and magistrate with the corrupt receipt " of money, it seems fit and requisite, that they " should be brought to the test of public investigati- " on,"—a test to which, it was the sole purpose of the premature and irregular applications of your memorialist to the court of appeal at Patna to submit his conduct; a purpose certainly not inconsistent with some degree of impatience, on the part of your memorialist at seeing his character, for six months together, traduced and calumniated in that court, by the most foul libels, entertained there in the shape of petitions, to which it was not in any way permitted to your memorialist to make answer. The charge of corruption brought against him was "submitted to " the test of public investigation"—the result shewed, how little he had to fear from the investigation of a charge the dismissal of which, without inquiry, was said to have been the object of his frequent requisitions, the charges, made upon oath, against your memorialist have been declared by the highest authority to be wholly without foundation. The perjuries of his defamers have been proclaimed, but those perjuries have gone unpunished, and even unreproved.

16.—It is not for your memorialist to decide, on the policy or impolicy of the regulation, which re-

quired from the person, who should prefer a charge of corruption against a judge, security, that that charge should be followed up. The regulation in question formed part of that code of laws, for which the memory of Marquis Cornwallis will ever be honored and revered in India. It has never been charged to be the purpose or tendency of any part of that system, to screen the servants of the company, or to throw obstacles in the way of the just complaints of the natives of India. But if it was thought fit at all, to afford protection to the judicial character, against false and malignant accusations, it might appear, to the framers of that system, that the oath alone of the accuser was little adequate, to that purpose. The scenes which are daily exhibited in every court of justice in India, afford a melancholy proof, that an utter forgetfulness of the moral obligation of truth, and a contempt for the religious sanctions, by which it is attempted to be enforced, form prominent features of the native character. The more effectual check upon false accusations, that of requiring in every case that the party complaining should give security to follow up his complaint, was viewed by the court of sudder dewanny adawlut as a difficulty, thrown in the way of such accusations, as might be true. Their report says—" Without knowing what
" has occasioned the difficulty of giving sufficient
" security for prosecuting the present charge, we
" apprehend, that such difficulty may often be ex-
" perienced in cases of charges against the public
" officers of government both native and european,
" when

" when such charges are not without foundati-
" on."

17.—The court of sudder dewanny adawlut in their letter go on to recommend to government, that the provisions of regulation 8th, of 1806, in respect to charges preferred against persons employed in the revenue and commercial department, should, with certain modifications, be extended to those who hold judicial offices under the company's government; and regulation 10th, of 1806, was accordingly past by government on the 19th of June. In its section 10th, it enacts—" that security shall not be demanded, in " the first instance for the prosecution of any charge " received under this regulation. But in the event " of its appearing necessary, at any time in the " course of the inquiry, sufficient *hazirzaminy* securi- " ty may be required from the accuser to attend and " prosecute the charge to a conclusion." This regulation was applied *ex post facto* to the case of your memorialist, and was acted upon before it was promulgated, and even before it was printed.

18.—Without offering any complaint on this subject, your memorialist cannot help remarking this singular circumstance, that the inconveniences of the former regulation should never have been felt, in any case, previous to that of your memorialist; and that the difficulties of giving security, which it was declared by the sudder dewanny adawlut might be experienced in cases where charges were " *not without* " *foundation*,"

"*foundation*," should, for the first time, have been discovered, in a case on the subject of which, the same authority had declared it to be highly improbable the charge should have *any* foundation.

19.—Under the new regulation, the court of appeal at Patna, by order of the court of sudder dewanny adawlut proceeded to enquire *ex-parte* into the charges preferred against your memorialist. On the 31st of July 1806 they forwarded some proceedings on the subject to the court of sudder dewanny adawlut, which by that court were laid before government. On the 18th September 1806, the governor general in council directed the court of sudder dewanny adawlut to order a copy of the proceedings of the provincial court to be transmitted to your memorialist, and to call upon him for any explanations or reply, which he might be desirous of furnishing on the subject. On the 4th of November of the same year, the provincial court enclosed to your memorialist, for the purpose of such explanation or reply, copies of the petitions preferred against him, and also of the *ex-parte* examinations of the complainants and their witnesses.

20.—Thus in November 1806, your memorialist was, for the first time, officially called upon to answer charges preferred against him in December 1805; and for nearly twelve months, a judge and magistrate stood charged before a superior court, with the crime of corruption in his office, during

which

which time he was not only denied all opportunity and means of defending himself, but was even refused copies of the charges which had been exhibited against him.

21.—On the 15th of November 1806, your memorialist addressed the court of sudder dewanny adawlut by letter, on the subject of the above charges of Doonda Sing and others, and transmitted a copy of his letter to the provincial court at Patna, this court having held further proceedings in the case, transmitted them to the sudder dewanny adawlut, who on the 7th of March 1807, made their final report on the subject to government.

22.—In this report, the court of sudder dewanny adawlut in paragraph 3d, express themselves thus, on the subject of the charge of corruption, preferred against your memorialist—" We have already expressed our opinion, in our address of the 31st " May last, that the complaints preferred by Doonda Sing, Govind Sing, Bhaugwunt Sing and Huldhull Sing against Sir Alexander Seton, charging " him with the corrupt receipt of money, had probably no foundation in truth—an attentive consideration of the further proceedings, which have been " held by the provincial court on those charges respectively, has confirmed us in that opinion. The " improbability of the circumstance, to which the " witnesses have deposed, and the recurrence of the " same improbable circumstances in the stories relat-

" ed by them, of transactions, stated as having passed " at different times, give to the whole an appear- " ance of fabrication, which joined to the inconsist- " ency of the evidence, with material facts appear- " ing on the magistrate's proceedings, renders the " testimony of the witnesses in a high degree incre- " dible. We therefore think it unnecessary to re- " commend the adoption of any further measures, " for an inquiry into this part of the accusation, " under regulation 10th, 1806."

23.—The charge against your memorialist having " thus undergone the test of public investigation," and having been declared, by the court of sudder dewanny adawlut, to contain almost every ingredient which, in a court of justice, would be held to form and constitute the crime of perjury, the same court of sudder dewanny adawlut, the supreme head of the judicial system in India, and the natural protector of its judicial officers, are content with declaring it to be unnecessary, to recommend any further inquiry into the charge made against your memorialist, and without passing a single animadversion or comment, on the conduct of the perjured authors of a charge of corruption, acknowledged to be false, against a judge and magistrate, they proceed, with singular liberality and tenderness, to consider the reasons which might have induced the accusers to make that charge, and which might in some sort be urged in palliation of their act.

24.—In paragraph 4th of their letter, the court of sudder dewanny adawlut, after fully acquitting your memorialist of the charge, say—" the proceed-" ings of the magistrate against the complainants in " which the accusations originate, appear however " to require the notice of government"—they then proceed to charge your memorialist with different acts of irregularity in the execution of the duties of his office. These shall be observed upon in their order, and the matters stated as they really happened, your memorialist having nothing to conceal from this honorable court, and having no other wish than that they should judge on the *whole* of his conduct, and on the *whole* of the conduct of others in respect to him.

25.—The first irregularity with which your memorialist is charged by the letter in question, of the court of sudder dewanny adawlut, is the corporeal punishment, inflicted on Sunkram Durriam and others for resistance of process, on the accusation of Sree Govind Sing and Doonda Sing, the subsequent accusers of your memorialist. The circumstances of this case were these. Resistance to the process of the court, for giving possession of lands to purchasers at the public sales, had become, as your memorialist has already observed, so common in the district of Tirhoot, that no person who had not powerful followers, and a force sufficient to repel that of the person, whose lands were to be sold, durst become a purchaser. No one who had not strength sufficient to

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keep possession when obtained (and for this also force was frequently required) chose to give his money for a title at law, which was to be tried a second time literally by the sword. Among the many affrays that had taken place between the parties themselves, as well as between the parties and the officers of the court, none had ever been accompanied with circumstances of greater outrage, than that occasioned by Sunkram Durriam and others. They were not content, with keeping possession, by force, of lands made over, with every solemnity which the law could give, to the new purchasers; but when, upon complaint made of their resistance, the officers of the court were sent to enforce its process: Sunkram Durriam and others with their armed adherents, attacked them, drove them off, and in the course of a most violent and bloody affray, severely wounded some of those officers, who returned to your memorialist with the process of the court contemned, and unexecuted. Your memorialist took upon himself the responsibility of punishing summarily, the authors of this enormous outrage. He ordered them the moderate number of stripes mentioned in the report of the sudder dewanny adawlut,* and the order was certainly irregular. No irregularity, in a judge or magistrate is strictly justifiable. The nizamut adawlut alone, your memorialist admits, had by the regulations the power, in such a case, to inflict corporeal punishment. That the parties must have undergone corporeal

* On Sunkram, 5 rattans; on Durreau and Hurreon Roy, 10 rattans each; and the others, 20 rattans each.

corporeal punishment, on a representation to that court, is certain; that the punishment inflicted upon them, was too severe, for the nature of the offence is not even pretended. But the regulation was certainly infringed, and if the urgency of the case and the advantage, which seemed to your memorialist, likely, in point of example, to arise, from the summary justice exercised in this case, cannot be urged as a justification of his conduct, it will at least explain his motive, which in the absence of every other, which can be imputed to him, he may safely assume to have been no other than the public good, and the peace and order of the district committed to his charge. It is clear that the Patna provincial court considered the conduct of your memorialist in this light—and that the nizamut adawlut did not originally deem it to deserve their censure or that of government, for when the case occurred, it was represented to the nizamut adawlut, who referred it to the provincial court, which court revised the proceedings of your memorialist on that occasion, and no disapprobation was ever expressed from any quarter at the measure he adopted.

26.—The second irregualrity, with which your memorialist is charged, is the commitment of Sree Govind Sing, Doonda Sing, Hunnye Roy, Oman Roy and others to the court of circuit, on a charge of murder, preferred against them by Bholaw Roy, Purbhur Roy, and Cuddum Roy. This charge your memorialist can meet with perfect confidence, and he

insists

insists that, in this instance, his conduct was not only regular, but that if he had adopted any other he should have laid himself open to a charge, not merely of irregularity, but of a gross violation of his duty as a magistrate. Four witnesses swore positively to the act of violence, and to the death of the person, in consequence of it. The dead body was ascertained to have been seen, with marks of violence upon it. The testimony of the witnesses was perfectly consistent, and a stranger to the characters and relative situations of the parties, would without any hesitation have concluded, that the charge was true, if not most satisfactorily repelled by contrary evidence, which could only be adduced at the trial. This then, beyond all doubt, would have been a case for commitment by a magistrate, who had no previous knowledge of the parties. The question then is, whether *suspicions*, which, in conseqence of his knowledge of the parties, your memorialist might entertain as to the truth of the charge, would have justified him in not committing the persons in question. His suspicions, on the subject, were certainly awake, from knowing the enmity, which exsisted between the parties, still, although from that circumstance, he might have reason to doubt the truth of the accusation, could he be prepared positively to decide that it was false?—Nothing short of this would have been a justification for not committing. Now it was very possible, your memorialist admits, and even not improbable, that a person might accuse his enemy falsely of the crime of murder; but was it impossible, that that

enemy

enemy might have committed even the brutal act sworn to in this case, which was kicking on the belly the wife of his adversary, then in a state of pregnancy? Was it impossible, or even unlikely, that such violence might occasion death. The death of the person was certain. The violence was sworn to, and the death of the party was sworn to have arisen from the violence. The relations of the deceased called for justice. In such a case, where it may be asked, would have been the justification of the magistrate, who had *not* committed. Your memorialist allows, that by the regulation cited, the magistrate ought to discharge the party accused, if "it shall appear to "him that the crime or misdemeanour charged a- "gainst the prisoner, was never committed; or that "there is no ground to suspect him to have been "concerned in the committing of it." This must appear, your memorialist apprehends, not from any *suspicion*, which the magistrate may entertain, from his knowledge of the parties, that it may be a fabricated story founded in malice; but it must *appear* to him, beyond all doubt, on the evidence before him, (and he must justify himself in that as in every other case, by his proceedings, which set forth that evidence) that the crime never was committed, or that there is no ground to suspect, that the prisoner was concerned in it. Who then is prepared to say, that there appears no ground of suspicion against a man of having done that, which four witnesses have positively sworn they saw him do? The regulation in questi-

on,

on, your memorialist further submits, can be held to apply only to those cases, where there is no *positive* evidence of the commission of the crime, or where the prisoner is affected with *suspicion* only, of having committed it. This may arise out of circumstances, to which the deponent makes oath before the magistrate, and upon which the magistrate must decide, whether they form a sufficient ground of suspicion, to commit the prisoner for trial. If upon consideration of those circumstances, it appears to him that there is "no "ground of suspicion" against the prisoner, he is bound forthwith to discharge him. But if there is a positive oath, that the crime was committed, and committed by the prisoner, the case is very different. The duty of a committing magistrate, or justice of peace, is not to judge on the guilt or innocence of the party, or even on the *probabilities* of his guilt or innocence His business is merely to decide, whether there is *any* ground for sending him to a public trial, where, and where only, his guilt or innocence can be established and ascertained. The best writers* on the criminal law of England have held, that if there is a positive oath against a prisoner, accused of felony, the magistrate has no choice—he *must* commit. The commitment however, made under the above circumstance by your memorialist, was the reason afterwards assigned by government, for refusing him the aid of their law officers, in prosecuting for perjury Doonda Sing and

* Hawkins's Pleas of the Crown.

and Sree Govind Sing, whom the same government had recorded as having falsely accused your memorialist of corruption in his office.

27.—The third head of irregularity, charged against your memorialist, is, his having detained Huldhull Sing in custody, under the charge of a single Chaprassee, without making any record of his being under restraint at all. If the case be so, your memorialist was to blame; and those who have never committed an act of irregularity, so serious and so enormous as this, have a right to be severe upon your memorialist for it. Huldhull Sing, it is evident, had no oppression to complain of. Oppression however, was the ground, on which your memorialist was also refused by government, any assistance in prosecuting this man, for his perjury at Patna.

28.—The next irregularity imputed to your memorialist, is having improperly entertained a charge of murder against Bhaugwunt Sing. That your memorialist never held the offence, imputed to Bhaugwunt Sing, to amount to murder is clear, from his not having issued an order in the first instance for his apprehension. But being charged with other acts of violence he was summoned to appear and bailed, and the suit was subsequently dismissed by proclamation. Yet on the assumed ground, that Bhaugwunt Sing had been put to unmerited "inconvenience and embar-"rassment" the aid of the company's law officers was

in like manner refused to prosecute Bhaugwunt Sing for the same crime of perjury.

29.--The fifth and last specific charge of irregularity brought against your memorialist, is, the apprehending of Seeteram and others on a charge also of murder. The report of the sudder dewanny adawlut states, that your memorialist appears to have acted without that degree of circumspection necessary on the occasion—" that notwithstanding the connection " between the present and a former complainant " (Bhurream Roy, alleged to be his brother) and the " suspicion, which should have occurred, as to the " truth of the charge, arising from that circumstance, " and from the neglect of Durream Roy to proceed " in the prosecution of the former charge, after hav- " ing preferred it, thereby affording strong presump- " tion that both charges originated in groundless and " malevolent motives, with the sole view of harrass- " ing Bhaugwunt Sing and his dependants, the magis- " trate without any previous inquiry, issued orders to " apprehend the parties accused, &c." Your memorialist in answer to this, has only to state, that there was a positive charge upon oath of murder, and that he should not have thought himself justified in delaying, for the purpose of further inquiry, the *apprehension* of persons so charged, merely because there might be a *suspicion* arising from the relationship of the present to a former complainant, who had omitted to make good a similar charge, that the charge in question was untrue; or upon a *presumption so founded,*

*founded*, that both charges were groundless and malevolent. To use the words of the court of sudder dewanny adawlut, it might be " highly improbable " that these several charges had any foundation, but " as they were sworn to, and as they expressly charged the parties, with the crime of murder, was it " not desirable and requisite that they should be " brought to the test of public investigation."

30.—The sudder dewanny adawlut, in their report, proceed to notice the general irregularities which appeared, in the proceedings of the magistrate, in not inserting the true dates of the apprehensions of prisoners. In this point, your memorialist admits himself in some degree to blame, not for what he did, but for what he omitted to do, to alter the former practice of the court in this respect. It had been the practice of his predecessors in office, not to distinguish in their monthly reports, the day of the apprehension of prisoners in bailable cases, from the day of their being released on security; a regular list was however kept by the native officers of the respective dates of their apprehension and release, which list could at all times be referred to. But the monthly reports were certainly made out in the manner stated without distinguishing such dates, and so made out they had been regularly, for many years, submitted to the nizamut adawlut, without any observation or comment on the part of that court. If the reports were looked at all, the circumstance must have been discovered; and if the practice had been disapproved of, it ought

to have been noticed. The true charge therefore is not, that your memorialist established this practice, but that he did not change that which he found established, that which had been adopted by all his predecessors in office, and which must be taken not to have been disapproved of by the superior court, as it cannot be supposed to have been unknown, and was not corrected by them. The practice, certainly an irregular one, had been continued by the same Mohurrer, who had served the former magistrates, and your memorialist has only to lament that it equally escaped them and him, and the court of nizamut adawlut, to correct it.

31.—Your memorialist having thus admitted whatever can be fairly imputed to him on the score of irregularity, he has only to remark, that, as those irregularities, real or supposed, were not considered by government to form sufficient grounds even for his suspension from office, so your memorialist may venture to affirm, that the zillah judge and magistrate, who can boast of having done nothing in any degree irregular, must have had, under his charge, a district in a very different state from that in which your memorialist found the district of Tirhoot. But he has no wish to justify any irregularity of his own, by the irregularities of others, and he is willing to take the full blame of whatever, upon a fair and liberal construction of his conduct, and of the motives, which actuated it, may appear to be chargeable to your memorialist upon that head.

32.—It is however here to be remarked that, if in fact, the false accusations, brought against your memorialist in the court at Patna, originated, as the court of sudder dewanny adawlut stated they did, in the proceedings of your memorialist, it will hardly be contended, that those proceedings however irregular or even oppressive, could justify the crime of perjury, committed by the petitioners, in swearing to the truth of those accusations. Yet certain it is, that, although the channel of complaint, when those petitioners accused your memorialist falsely, had been cleared and laid open to them by a regulation of government, past (it may be said) *ad hoc*, it was wholly shut to your memorialist, when he endeavoured to bring to justice, for their *admitted perjuries*, those detected defamers of his character. They have, to this day, through powerful and avowed protection, escaped the punishment due to their crimes.

33.—On the 9th May 1807, your memorialist solicited from government the assistance of their law officers, in prosecuting for perjury, Doonda Sing, Huldhull Sing, Bhaugwunt Sing, and Sree Govind Sing. In answer to this application, your memorialist received a letter from Mr. Secretary Dowdeswell, dated the 19th of June, in which he states, that, adverting to the just grounds of complaint, which Doonda Sing and others had, in the first instance, against your memorialist, the governor general in council, did not think proper to direct, that a prosecution

secution should be instituted against them on the part of government, but that your memorialist was of course at liberty to prosecute as an individual, if he thought proper. To the supposed grounds of complaint, which Doonda Sing, and others had against him, your memorialist has already spoken, and he has only here to add, that whatever those grounds of complaint might have been, (though he submits that they had none) the nature of their crime was not thereby altered, nor was it in a public view of less dangerous example and tendency. As a private prosecutor however, your memorialist determined to obtain justice, if justice was to be had.

34.—In the interval, between the time of your memorialist's application to government, and that of the answer received to it, Mr Smith had resumed his inquiry into the alleged misconduct of the native officers, in the jail of Tirhoot—Doonda Sing, Huldhull Sing, &c. against whom your memorialist had determined to proceed as a private prosecutor, being in constant attendance on Mr. Smith, and their attendance being declared by him to be indispensable, whilst the inquiry was carrying on, your memorialist had thought it right to leave them unmolested, until their attendance should no longer be considered necessary by that gentleman. Your memorialist however thought it reasonable to request of Mr. Smith, in a letter of the 29th of May, to give your memorialist timely notice of his intention to dispense with their attendance at his catcherry. On the

the next day, it being generally reported, that Mr. Smith had given Sree Govind Sing leave to depart, your memorialist further requested of Mr. Smith, by letter, to inform him, whether or not the report was correct. In answer to both letters Mr. Smith, after declaring himself the express protector of the persons of those men, says—" When any one having autho-" rity to determine, whether these men should be " suffered to leave the district or not, shall, in the " exercise of that authority, think it necessary, or " worth while to enquire, from me the relation they " bear to my court, and the degree of necessity " there may be for their attendance, I shall of course " feel no objection to satisfy his inquiry."

35.—In consequence of Mr. Smith's refusal to give your memorialist, any information on the subject, your memorialist addressed a letter to Mr. Watson, the acting magistrate on the 3d of June, stating his charge against Doonda Sing and others, and also that your memorialist had reason to apprehend, they intended to abscond, and desiring that security might therefore be taken from those persons to answer the charge which should be brought against them. Your memorialist further submitted to the magistrate, that no objection could exist, to the immediate requisition of security from Sree Govind Sing, who had quitted Mozafferpore, and with respect to Doonda Sing, Huldhull Sing and Bhaugwunt Sing, he expressed a hope that it might be demanded, previous to their departure.

36.—On the 3d of June, an order was passed by the acting magistrate, that process should issue against Sree Govind Sing, calling on him to give security, for his personal appearance, to answer a charge against him for perjury. On the 4th of June, a petition was presented to Mr. Smith by Bhaugwunt Sing, Huldhull Sing, and Doonda Sing, stating that a summons had issued from the magistrate calling upon *them*, together with Sree Govind Sing, to give security on a charge of perjury, and that twelve Chupprassies and three Duffadars had been deputed, to apprehend Sree Govind Sing, who had gone away with the leave of the judge of circuit.

37.—On receiving this petition, Mr. Smith called for explanations from the magistrate, and for all his proceedings on the subject mentioned in the petitions. On the same day, the magistrate transmitted his proceedings to Mr. Smith, by which it appeared, that process had not issued against the *four* persons in question, but that process had issued against Sree Govind Sing only, and that three *persons* and not fifteen had been entrusted with the execution of that process. He also transmitted to Mr. Smith a copy of the letter of your memorialist, containing the charge of perjury against Doonda Sing and others. On the same day, further proceedings were held by Mr. Smith, and on these proceedings it is alleged, that, as the case, in which Doonda Sing, and others were sworn as witnesses, was before the court of appeal for the division of Patna, and their examinations were taken on oath

before

before that court, the zillah magistrate was incompetent, under the 3d regulation of 1801, to receive a charge of perjury in such a case; and that, when a charge could not be received by the magistrate, it was evident, he could not require security for appearance to answer that charge. In consideration, therefore, that the order of the magistrate was in direct opposition to the regulations, and to the practice of the courts it was ordered: "that a copy of the proceed-
"ings be sent to the magistrate, with a requisition,
"that he forthwith stay execution of his order of that
"date, that he withdraw his Chupprassies, and that
"till he be empowered by an authority, whose order
"it may be his duty to obey, he do not again pro-
"ceed against Sree Govind Sing, or the other com-
"plainants above named, &c."; with this order Mr. Watson declined to comply, as being beyond the scope of Mr. Smith's authority.

38.—The magistrate urged his reasons for thinking, that Mr. Smith's authority, as judge of circuit, was confined to the object of the inquiry, which he was commissioned to make, and reminded him of his own communication to him, (the magistrate) that he had come for the *sole purpose* of compleating that inquiry. A variety of proceedings were held, and a great deal of correspondence passed on the subject, between Mr. Smith, and the acting magistrate, and on a representation of those proceedings, and that correspondence to the court of niza-

mut adawlut, by *Mr. Smith,* (Mr. Watson not being called upon for *his* statement, or *his* explanation of the business) they were pleased, in a letter to the former gentleman, to declare that the magistrate of Tirhoot had acted irregularly and improperly, in issuing the process in question; and that even if the complaint had been upon oath, the acting magistrate would not have been warranted under the provisions of section 2d, regulation 3d, of 1801, in issuing any process against the accused, without the express authority of government or of the court, before which the alleged perjury was committed. The letter further contained a sanction of Mr. Smith's conduct, in having ordered the irregular process to be withdrawn, which it was declared, he had a power to do. A copy of this letter was transmitted to Mr. Watson from Patna, by Mr. Smith, with an order to withdraw the process and certify to Mr. Smith, his having done so. On the 1st of July the process was withdrawn by the magistrate, but no return was made to Mr. Smith, who (the magistrate observed) could not be held to form a court of circuit at Patna.

39.--The regulation 3d, of 1801, on which the decision of the court of nizamut adawlut in this case was founded, recites,—" that by section 14th, regu-" lation 4th, of 1793, it is enacted, that if a witness " or any person shall be guilty of wilful and cor-" rupt perjury, in any cause or matter depending in " court, the judge is immediately to commit the of-

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"fender to close custody, to take his trial before the "court of circuit of the division, in which the of- "fence may have been committed. But a practice "has become very prevalent for parties in *civil* suits, "to prefer unfounded charges of perjury against the "witnesses of their opponent, and against their own "witnesses, where their evidence does not establish "every point they are called upon to prove, &c.; "the only effectual remedy which can be applied to "this abuse is, to take away altogether, from parties "in *civil* suits, the right of bringing forward such ac- "cusations, and to leave it in the discretion of the "judge to determine, when any witnesses brought "before him are guilty of perjury, which he may "always be able to do by cross-questioning them "minutely, and by confronting them when necessary, "with the witnesses of the adverse party." This regulation in its 2d section, therefore enacts "that the "magistrates of the several zillah and city courts, "shall not receive any charge of perjury, which may "be preferred by parties in civil suits, either against "their own witnesses, or against the witnesses of the "adverse party, or of subornation of perjury against "the adverse parties, in such suits; and all individu- "als whose attendance is required in the civil courts, "either as plaintiffs, defendants, or witnesses, are "hereby declared not liable to any prosecutions of "this description, unless they shall be committed to "take their trial by the zillah or city judge, under "the authority vested in him, by section 14th, regu- "lation 4th, 1793."

40.—It seems difficult to conceive, by what ingenuity the case in question can be brought within any of the provisions of this regulation: for 1st, It does not relate to a civil suit—2dly, The deponents were parties and not witnesses—3dly, If witnesses, there were no opposite witnesses to confront them with—4thly, There was no opportunity of cross-questioning—(cross-examining them)—5thly, The court who received the charge, had no power to enquire into its truth, falsehood, or probability. In fact, the oath made and the security given, their functions were at an end—those functions were purely ministerial, and of this opinion were the judges of the court of Patna themselves.

41.—The decision however, of the sudder dewanny adawlut having been confirmed by government, your memorialist was informed by a letter from Mr. Secretary Dowdeswell, of the 21st of August 1806, that in the event of your memorialist determining to institute a prosecution for perjury against Doonda Sing and others, it would be necessary, under the rule, contained in section 2d, of regulation 3d, of 1801, to apply to the court of appeal at Patna, before whom the perjury was alleged to have taken place, to commit the persons in question for trial. In conformity with these instructions, on the 12th of September, your memorialist applied to the court of appeal, by letter, requesting, that, if there should appear to them to be grounds for committing the

the parties for trial, they should be committed accordingly. On the 17th of the same month, the court of appeal, informed your memorialist, that a reference to the superior court was necessary, prior to their giving any answer to the requisition of your memorialist.

42.—On the 21st of the same month, the court of appeal, in an address to the sudder dewanny adawlut, expressed themselves thus—" In the extract " from the orders of the governor general in council, " transmitted to us, by both Sir Alexander Seton and " the acting magistrate, his lordship is pleased to " say, that Sir Alexander Seton is at liberty to prosecute as an individual, the parties for perjury; " and that, if desirous of instituting such prosecution, he must under section 2d, regulation 3d, of " 1801, apply to our court, before whom the perjury is alleged to have taken place, to commit " them for trial. With all deference to so high an " authority, we take the liberty of observing, that " section 2d, regulation 3d, of 1801, relates exclusively to civil suits in which the court, trying the " suit, would by section 14th, regulation 4th, of " 1793, have the power of immediate commitment " on its own judgment of the falsity of the evidence " given before it; that the previous inquiry, for which " these depositions were taken, under the provisions " of section 5th, regulation 10th, of 1806, seems " little analogous to a civil suit, and that at all events, " as we took the examinations in question, in no o-

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" ther capacity, than as ministerial agents, for the " decision of higher authority, without any right of " judgment in the case ourselves, section 14th, regu- " lation 4th, of 1793, which is the foundation of sec- " tion 2d, regulation 3d, of 1801, seems perfectly " inapplicable on the present occasion, nor can " we see how the circumstance of our agency hav- " ing been employed, for the purpose of taking these " examinations, in preference to that of any other " channel, which would have been equally compe- " tent to it, if resorted to, should render our ministry " necessary for carrying into effect, the sanction " which the governor general in council has been " pleased to give the prosecution for perjury." Thus the court of appeal of Patna, had not only the misfortune to differ from government in their construction of the regulation in question, but also to misunderstand, it should seem, the meaning and intention of government, where they informed your memorialist, through their secretary, that he was at liberty to institute a prosecution, as an individual, against the persons in question. Government in their letter to the court of sudder dewanny adawlut, are pleased to say, that this " could neither import the " sanction of government to such prosecution, nor " any opinion whatever upon it." If this be so, your memorialist has only to remark, that very little information was conveyed to your memorialist by the communication in question.

43.—The court of sudder dewanny adawlut did not concur in the reasoning of the court of appeal, and accordingly, in a letter dated the 5th December 1807, their register conveyed to them the following opinion and instructions—" The court, on considera-" tion of the evidence given by Huldhull Sing, " Bhaugwunt Sing, Doonda Sing, and Sree Govind " Sing, and of the other proceedings held, on the " charge of corrupt receipt of money by Sir Alexan-" der Seton, are of opinion, that there is not, on the " face of the proceedings, sufficient grounds to war-" rant the commitment of those persons for trial, on " the charge of perjury. The court are also of opi-" nion, that, if Sir Alexander Seton have other evi-" dence to shew, that in the depositions given by " them, they have been guilty of perjury, it is in-" cumbent on Sir Alexander Seton to exhibit the fur-" ther evidence before the court, in which the depo-" sitions were received, or for whose information they " were taken; I am directed therefore to desire, that " you will receive the evidence, which may be offer-" ed by Sir Alexander Seton, and determine, whether " there are sufficient grounds for committing the per-" sons for trial on the charge of perjury, and in the " event of your being of opinion, that grounds do ap-" pear, you will authorize the commitment of them " accordingly."

44.—It will be remembered, that your memorialist was fully acquitted by government, and by the sudder

sudder dewanny adawlut, of the charges of corruption, preferred against him upon oath at Patna, and one cannot help here recurring to the address of the sudder dewanny adawlut to government, of the 7th of March 1807, in which they notice the improbability and inconsistency of the circumstances sworn to, the consequent incredibility of the testimony given, and from which they conclude, and declare it to be their opinion, that the charge of corruption preferred by Doonda Sing and others *upon oath* against your memorialist, had no foundation in truth, and that it became unnecessary to institute any further inquiry into it. Yet although the charge of corruption preferred against your memorialist, upon oath, was thus held, upon the evidence adduced in support of it, to be so incredible, that your memorialist was acquitted, without being called upon for his defence, still, when a charge of perjury was brought by your memorialist against those, who, without foundation, had preferred upon oath this charge of corruption against him, he was told that there were not grounds to warrant the commitment of those persons for trial.

45.—It is to be observed, that the charge brought by your memorialist, having been declared to fall within the regulation above cited, it did not require to be verified by the oath of the party accusing, but was to be judged of, by the court before whom the oath, charged as perjury, had been taken, who were to decide, upon the circumstances which passed before them, on the occasion of taking the oath, whether

they

they formed a sufficient ground of commitment for trial—That no difficulty however might be raised on this point, your memorialist, on the 24th day of December 1807, transmitted to the court of appeal an affidavit, sworn by him, before Mr. Watson, the magistrate of Tirhoot, on the 2d of July, 1807, setting forth—"that the said charges of corruption were "false, malicious, and groundless, and that the said "Doonda Sing, &c. in making oath thereto, were "and are guilty of wilful and corrupt perjury." In answer to the letter, which enclosed this affidavit, Mr. Edward Colebroke, second judge of the court of appeal of Patna, addressed your memorialist under date of the 29th December, in the following terms—"In answer to your letter of the 24th instant, I beg "leave to inform you, that, *under the instructions* "*of the sudder dewanny adawlut* of the 5th instant, "the evidence which you have to adduce for the "proof of the perjury, alleged to have been com- "mitted by Huldhull Sing, Doonda Sing, Bhaug- "wunt Sing, and Sree Govind Sing, in their depositions before this court, must be brought forward, "before any measures can be taken, for the apprehension of the parties, on the charge exhibited by "you against them."

46.—It appears by this letter, that the court of appeal, before whom the false charge against your memorialist had been made, who had themselves taken the evidence adduced in support of it, to whom all the circumstances attending it were therefore ne-

cessarily known, in possession too, of the opinion of the sudder dewanny adawlut, that it was without foundation in truth, and that the evidence in support of it was inconsistent, and highly incredible; furnished besides with a positive oath to the falsehood of that charge, *still acting under the instruction of the court of sudder dewanny adawlut*, they call for further evidence, before they think themselves justified, in deciding, whether or not the matter ought to "be submitted to the test of public investigation." What further evidence it was expected, your memorialist should produce, he is wholly at a loss to imagine—The records of their own *ex-parte* inquiry, furnished them with the contradictions, inconsistencies, and incredibilities, on which the sudder dewanny adawlut had declared it to be their opinion, that the charge was without foundation.—To its positive falsehood, they had the oath of your memorialist, the only person enabled *directly* to negative the charge—The question was not, whether upon such positive testimony, joined to the circumstancial evidence alluded to, those men should be declared guilty of the charge, but whether the charge should be enquired into, or in other words, whether they should be indicted for the offence charged.

47.—That the court of sudder dewanny adawlut should not have deemed this to be a case for commitment, appears to your memorialist most extraordinary, considering that when the charge in question was made, they deemed *that* to be a case for inquiry. It seems

seems to your memorialist, that the court, to justify their decision, in not ordering the commitment of the petitioners for trial, must be prepared to say, that they had wholly altered their view of the matter, and that they believed, not only the petitioners to have sworn what was true, but your memorialist to have sworn what was false. Either the charge, contained in those petitions, amounted to a specific charge upon oath, of corruption, or it did not. If it did, and the court continued to be of opinion, from the improbability of the circumstances, and the incredibility of the testimony given, that the charge was without foundation, when in addition to this, they were furnished with a positive oath, that the petitioners, in making that charge, had sworn falsely what would have been wanting, it may be asked, had they even acted as a grand jury, to warrant their finding a bill of indictment for perjury against them? If on the other hand, the petitions did not contain a specific charge upon oath, of corruption against your memorialist, upon what ground, did the court of sudder dewanny adawlut recommend, that the charge should be enquired into, or in their own words, "submitted to the test of public investigation?" Upon what authority did government direct that inquiry to be made? Was it on the authority of the 5th regulation of 1793? If the oath prescribed by that regulation was meant for any purpose at all, it was meant to be a security, that the fortune, fame, and character of an individual, should not be put in jeopardy, without the solemn sanction of an oath, and all the

 responsibility

responsibility attached to it. Can it be argued on any principle of law or of common justice, that when a charge so preferred should turn out to be false, the oath, so taken, should be held less than perjury? Where in any country, where above all in India, is the security of an oath without its responsibility?

48.—The discussion on the subject of the commitment of Doonda Sing and his associates, was at length terminated by their withdrawing into the Napaul Territory, whence they were afterwards recalled, by the signal interposition of the favor of government, in ordering their lands to be restored, which they had forfeited under process of outlawery against them. Shortly after their return, they had opportunities of shewing, in what sense they interpreted this act of government, which they appeared to have considered as affording them not only indemnity for the past, but *impunity* for the future—three out of the four have been since tried and convicted, for being concerned in affrays, in which several lives were lost, and are now suffering under the sentence of the law, which has at last reached them, no doubt to their great surprise, for one of their manifold offences.

49.—Your memorialist will now return to consider the grounds on which he was suspended from the office of judge and magistrate of Tirhoot. The court of sudder dewanny adawlut having, by order of government, directed that the judge proceeding on the circuit for the division of Patna, should make an inquiry

inquiry into the abuses and cruelties, alleged to have been committed by the native officers in the jail of Tirhoot, and report thereupon, the charge devolved on Mr. Courtenay Smith, who opened his sittings at Mozafferpore, on the 4th of March 1807. Your memorialist has never been able to procure a copy of Mr. Smith's instructions; but they may be fairly concluded to have been in substance, (as stated in the minute of government hereafter to be considered) to inquire "into the abuses and cruelties, said to "have been committed by the *native* officers in the "jail of Tirhoot." To inquire into the conduct of the judge and magistrate was a duty, which most certainly never was confided, or intended to be confided to Mr. Smith.

50.—Very early, however, in the course of his proceedings, Mr. Smith shewed, that *his* principal object was to implicate the judge and magistrate in the ignominious charge, which he was called upon to investigate. On the 19th of February 1807, previously to commencing his inquiry, Mr. Smith had written to the secretary to the board of revenue, to search the records of that office for the purpose of ascertaining, whether one Ramnarain Muckerjee, whom he understood to have been formerly Dewan to your memorialist, when he held the office of collector of Nuddea or Beerbhom, had been, whilst he so acted as dewan, convicted of mal-practices and declared incapable of ever again serving government in any capacity. To this letter Mr. Smith received

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an answer from the secretary to the board of revenue, dated the 27th February, stating that there was no trace to be found of Ramnarain Muckerjee having been declared incapable of serving the honorable company in any capacity. This part of Mr. Smith's correspondence, although connected with the inquiry, he has never submitted to his superiors, but has carefully concealed it, fearful no doubt, that any thing even negatively favorable to a person the servant of your memorialist, should appear on his proceedings The purpose of Mr. Smith's letter will appear obvious, when the mode and spirit in which he carried on the inquiry shall have been seen. Ramnarain Muckerjee then still continued in the service of your memorialist, and it was no doubt thought of consequence by Mr. Smith to establish, that a person, disgraced and dismissed by government, had been continued in the employment of your memorialist, one of their public officers.

51.—Mr. Smith began his inquiry by ordering the answer to be taken (among others) of this Ramnarain Muckerjee, the mere domestic servant; but who has been purposely styled the private dewan of your memorialist. In the examination of the first witness, Mr. Smith's views are fully disclosed. Domun Sing, after having deposed to certain acts of cruelty and extortion, exercised upon him by one Phikoo, nazeer of the foujdarry, and particularly on one occasion, when it had been reported to the nazeer, that he the deponent had complained of oppression

pression to Ramnarain Muckerjee, the witness is asked, who Ramnarain Muckerjee is, and what his influence is, and stopping the investigation into the facts, sworn to against Phikoo, Mr. Smith pursues the examination of the witness thus:—

*Question*—" Does Ramnarain Muckerjee go to Sir Alexan-" der Seton?"

*Answer*—" I see that he goes towards the great house, " and *I hear* that he goes to Sir Alexander Seton."

*Q.*—" Does he go every day?"

*A.*—" So *I hear.*"

*Q.*—" *Is it reported* that he has *great* Influence over Sir " Alexander Seton?"

*A.*—" It is so *reported.*"

This is the first specimen of the fair, impartial, and *legal* mode, which Mr. Smith adopted for the examination of the witnesses on this inquiry; an inquiry, the precise object of which, an investigation into the conduct of the native officers in the jail, appeared to Mr. Smith, to afford no interest, unless the alleged abuses could some how or other, be brought forward in a shape to implicate your memorialist.

52.—On the 6th of March, Ramnarain Muckerjee himself is examined. He is first questioned, as to the different situations he had held under your memorialist, and is then asked—

*Question*—" Was any offence of yours *ever* proved to the " satisfaction of the gentlemen of the sudder?"

*Answer*—" Never."

*Q.*—" Answer after having well recollected yourself?"

*A.*—" I have so answered."

*Q.*—" Was there ever a proclamation against you, that you " should never again be allowed to serve the government?"

*A.*

*A.*—"Never."

*Q.*—"Recollect yourself well, and then answer?"

*A.*—"I speak upon full recollection."

The charge thus insinuated by Mr. Smith, against Ramnarain Muckerjee, a charge wholly devoid of truth, stands on Mr. Smith's proceedings, submitted by him to the superior court, whilst he has never had the common justice (your memorialist had almost said the common honesty) to do away any effect, which it might have had, by communicating to that court, the information he had received from the secretary to the board of revenue, negativing the charge so insinuated.

53.—The proceedings of Mr. Smith will be examined somewhat in detail in a subsequent part of this Memorial. At present your memorialist will confine his remarks to such parts of them, as more particularly shew the main object with which he began, and with which he finished his inquiry: they will, at the same time, exhibit examples of the manner in which *facts* were *proved*, in the course of an *ex-parte* inquiry; which, by the highest authority, has been said to establish the existence of abuses, resting upon similar testimony. In the second day's proceedings, a witness of the name of Teerb own Roy is examined. He speaks to the cruelties exercised upon him and others, and afterwards to the payment by Byjoo Roy and Amed Roy, (as Seeteram Ghose *told* him) of 300 rupees, and says that shortly after such payment, their causes were heard.

Question—

*Question*—" What is your *idea*, do you *conceive* the cases " being brought to a hearing, was owing to those rupees you " have spoken of?"

*Answer*—" My *idea* was, that we were indebted for the " hearing to the rupees, for till the rupees were given, there " was no hearing."

*Q.*—" When Byjoo Roy and Amed Roy had paid the ru- " pees, did they return to you, and say any thing?"

*A.*—" They returned to the door of the prison house, and " sending for Seeteram, *said something to him*—I did not myself " *hear* what they said, but Seeteram *told* me, that they had re- " turned from paying the rupees."

*Q.*—" Did Seeteram at that time, say any thing *about the* " *magistrate?*"

*A.*—" No, all he *said* was, that they had returned, after " paying the rupees to Ramnarain Muckerjee."

54.—Not only did Mr. Smith thus attempt to criminate your memorialist, through the supposed acts of Ramnarain Muckerjee, but he made no secret of his determination to enter into an investigation of the charges, contained against your memorialist, in the Patna petitions; charges which, as far as they regarded your memorialist, had been proved to be the fabrications of perjured witnesses, and from which Mr. Smith well knew, that your memorialist had by an authority superior to his, been fully acquitted, and absolved. He made no scruple of reading from the bench (translating them into the Hindoostannee language) those defamatory libels, and of examining witnesses, some times to their knowledge, at other times to their belief, of their contents; thus, most insidiously introducing evidence, as it were indirectly, against your memorialist, whose conduct formed no part of

the enquiry he was instructed to make. It is to be remembered, that the Patna petitions, to the truth of which, *generally*, Mr. Smith thus examined the witnesses, contained, not only complaints of abuses and cruelties, committed by the native officers, but direct charges of corruption against the judge and magistrate.

55.—Of this Mr. Smith well knew how to take advantage, and with his usual candour and fairness, he puts this question to a witness, Sheckh Nusrut Ally.

*Question*—" In your opinion, is there any reason to suspect " conspiracy and calumny, on the part of the complainants in " this instance, or do you consider their complaints (the peti- " tions) to be well founded ?"

This question your memorialist submits, necessarily includes in it the following—" In your opinion " is the charge of corruption against Sir Alexander " Seton, founded in conspiracy and calumny, or do " you believe it to be true ?" The answer of the witness to the question, put by Mr. Smith, is this— " Of the oppressions set forth in the petition the evi- " dence was notorious, and if it was not, why should " 40 or 50 persons have gone from the district to " Patna, to complain." This is another of the *facts proved* in this inquiry.

56.—Chattooree Roy, is examined in the same way by Mr. Smith—*Question*—" The petition pre- " sented to the court of appeal by Bhaugwunt Sing " and others, setting forth *various* oppressions, do you

" *consider*

"*consider* it as false or true?" The questions put to this witness was not equally successful with that put to Nusrut Ally. His answer is—"I cannot tell."

57.—There are many other instances of this mode of examination, which can have been adopted from no other possible motive, than a malignant desire to criminate your memorialist in a case, in which Mr. Smith knew him to be innocent. It was perfectly easy for Mr. Smith, if it had served his purpose, to have examined the witnesses to the *facts*, alleged, in the petitions, against the native officers, without thus labouring to give credit to the ascertained falsehoods and calumnies, which those petitions also contained against your memorialist.

58.—It has been already observed, that, sitting in the public cutcherry of the judge and magistrate, Mr. Smith had presumed to defame the character of that officer, by promulgating and sanctioning, from the bench, the foul libels and admitted perjuries of his accusers.—Not only did he affect to sit in judgment on your memorialist; but he proceeded (as if judgment had already past) to take upon himself the whole of the functions of your memorialist, and to annihilate his authority altogether, as judge and magistrate of Tirhoot.

59.—Mr. Smith, whilst sitting in the zillah court of Tirhoot, for the purpose of a specific inquiry, encouraged the presenting to him of petitions on every

 subject,

subject, connected with the general business of the dewanny, as well as foujdarry courts. For some days all petitions had been presented to, and received by Mr. Smith. He had taken, and retained possession of sundry of the records of both courts, which were absolutely necessary for the current business of the day, if any such had been allowed, to be carried on by the judge and magistrate. He had finished the calendar, and dismissed the amlah of the circuit, and could not be said, in any sense to form a court of circuit, yet instead of applying to the magistrate, to procure the attendance of the witnesses (the only regular mode, by which it can be done, even by a court of circuit) he caused the witnesses to be summoned by his own peons, who, under the direction of Huldhull Sing and his associates, dragged them from their dwellings, and brought them in custody to give evidence.

60.—On the evening of the 10th of March, your memorialist accompanied by Mr. Fleming the register, repaired to the cutcherry, for the purpose of formally requiring of Mr. Smith to deliver up the records, which he thus illegally detained, and also for the purpose of protesting, on the part of your memorialist, against the conduct, and mode of proceeding adopted by Mr. Smith, within the district committed to the charge of your memorialist. Mr. Smith having, upon that occasion, refused to deliver up the records, and having declared his intention to pursue the same line of conduct, he had hitherto

done,

done, your memorialist deemed it his duty to protest in writing, against the illegality of Mr. Smith's proceedings, and at the same time informed him, that the cutcherry would on the next day be shut for the Mohurrum.

61.—Mr. Smith, although he afterwards chose to consider this intimation as a notice from your memorialist, that the inquiry would no longer be suffered to proceed, declared at the time, that he would pay no attention to any such Protest, and continued to hold his sittings after your memorialist had quitted the cutcherry. At eight o'clock next morning, his moonshee attended, and found the doors of the cutcherry shut. It was before the regular hour of opening the cutcherry, and at that hour he might have found them shut on any other day of the year, as well as the first day of the Mohurrum. The moonshee however, according to his instructions no doubt, held some conversation with the seapoy on guard, retired under a tree, and drew up an Arzee to serve the purpose of his master, Mr. Smith. At the usual hour your memorialist sat in the cutcherry, and then adjourned the court for the Mohurrum according to the regulations. If Mr. Smith had chosen, he might have held his sitting also, on that day, and if the use of the cutcherry had been demanded by him for the ensuing day, and it had not been granted, he might then have fairly represented, that he had been debarred the use of the cutcherry by your memorialist. In that case the question might have arisen, whether your

your memorialist was, or was not bound by the regulations to shut the cutcherry on the first day of the Mohurrum. But taking it, that Mr. Smith had been refused the use of the cutcherry of the judge and magistrate, without enquiring how far the judge and magistrate, who was not accused before Mr. Smith, was bound to allow his own cutcherry to be the scene, where his character was not only traduced and calumniated, but his whole authority illegally assumed and usurped by that gentleman, your memorialist will only observe, that it was perfectly competent to Mr. Smith, to have pursued the inquiry entrusted to him, elsewhere than in the public cutcherry, and he might have done so, with more convenience, and with as little diminution of his dignity, in the spacious mansion which he then inhabited, as in the small bungalow, in which he thought fit afterwards to resume, and where he actually finished his proceedings.

62.—On the 11th of March however, Mr. Smith addressed a letter to the secretary to government, stating, that he had experienced from the magistrate, a sudden and violent interruption in the discharge of his duties, as acting judge of circuit, the particulars of which would appear from the papers he inclosed, viz. No. 1. being a letter, delivered in person, to him, by your memorialist; No. 2. a letter *intended* by him for your memorialist; No. 3. an *arzee* from the moonshee of the court of circuit, and No. 4. a translation of that arzee. No. 1. the letter of your memorialist

morialist, was in these words, addressed to Mr. Smith —" since the termination of the sessions, the conduct " you have pursued in your inquiry relating to the " Tirhoot jail, I consider to be illegal and unjust, and " therefore protest against further proceedings, and " shall not admit of interference with the duties of " my office." This act of protest is, as your memorialist submits, a thing very different from a violent interruption of the proceedings protested against. It was at the most, a notice to Mr. Smith, that he should proceed at his peril, in the course which he was pursuing, which your memorialist deemed to be illegal; that Mr. Smith did not consider it at the time as " a forcible interruption" of his proceedings is abundantly clear, not only from his continuing to hold sittings that evening, after your memorialist had left the cutcherry, but from his own letter No. 2. *intended* to have been sent to your memorialist, and addressed to him, but which was not communicated to him, till about *thirteen* months afterwards. In that letter he writes thus, par. 2d. " you say, I shall not admit of in- " terference with the duties of the Tirhoot magisterial " office. I wish to know, whether interference with the " Tirhoot magisterial office, and my illegal and unjust " conduct in the inquiry regarding the jail, mean one " and the same thing, because *if* they do, it follows, that " you will not admit of my proceeding, as I have hi- " therto proceeded, in my inquiry relating to the jail. " *If* you do mean this, I request that you may be ex- " plicit, that I may stay further proceedings, and not " expose myself and the authority under which I act

" to

"to insult." In the 6th par. of this letter, Mr. Smith says further—"I beg to know, whether it is "your intention after this date, to afford me the usual "facilities, met with by the court of circuit from the "magistrate, such as the attendance of a part of "your foujdarry amlah, ready reference to the re- "cords, &c. or whether you mean to withdraw "all this, and leave me to manage as I can, "without your aid, and with the few hands which "I, as judge of circuit, have brought with me," and in the 7th par. he adds. "Whatever you may "intend, I above all things request you may be ex- "plicit." If this letter had been sent to your memorialist, the explanation required would have been given, but in place of that, it was kept back by Mr. Smith, and he was satisfied, with the arzee of his moonshee, stating (as Mr. Smith has said, for it is not now forthcoming to refer to, both government and the sudder dewanny adawlut having informed your memorialist it was not among their records) that a seapoy had told him, that the doors of the cutcherry were not to be opened, the reverse of which Mr. Smith must have known shortly afterwards, and before he dispatched his letter, to be the fact, as at the usual hour the cutcherry was opened, and your memorialist sat there as at other times. Why did not Mr. Smith then ascertain, whether the use of the cutcherry was to be granted or refused to him? Why did he not send the letter No. 2. to your memorialist, to learn explicitly his intention, and to clear up the doubts which he entertained on the subject? This

line

line of conduct would have been open and manly, whilst the withholding the letter, and procuring the arzee from the moonshee, as well as the use made of both, savour of craft and meanness. Your memorialist is far from insinuating that he felt any surprise, when he learnt the line of conduct, which had been made choice of by Mr. Smith.

63.—Your memorialist will have occasion particularly to notice the different topics touched upon by Mr. Smith, in his letter of the 12th of March, when your memorialist comes to consider the final report of Mr. Smith of the 21st September, where the same topics recur. He will only here observe, that through the whole of Mr. Smith's letter, it manifestly appears, that he had prejudged the case at that early stage of the inquiry; and that it was quite immaterial, *what was to be* given in evidence, in any subsequent part of it.

64.—The guilt of Ramnarain Muckerjee he states "from every thing he had discovered to have "been *then* clearly established, and that he had there-"fore" found it necessary to leave an order with the magistrate, that Ramnarain should not be suffered to quit the district, without the permission of government, or giving good security for his future appearance if called for. It is not difficult to discover Mr. Smith's motive for making this statement to the nizamut adawlut, respecting the private servant of your me-

 morialist,

morialist, and it had no doubt the same effect as if it had been *true*. The *fact* however is, that no such order ever was given by Mr. Smith, which is proved by no *such* order appearing on his proceedings.

65.—On the 12th of March, 1807, your memorialist addressed the court of nizamut adawlut, by letter at considerable length, in which he entered into a detail of the illegal acts and measures adopted by Mr. Smith, of the partiality and injustice displayed by him in carrying on his inquiry, and at the same time submitted to the court of nizamut adawlut, nine specific charges of misconduct against him, all of which your memorialist offered, and pledged himself to make good by proof, and any of which, if proved, were sufficient to shew, that Mr. Smith was a person most improper and unfit to be entrusted with the further prosecution of the inquiry in question.—Those charges were passed over unnoticed, both by the court of nizamut adawlut and government.

66.—On the 23d of March 1807, your memorialist was suspended from his office, and his open and avowed enemy Mr. Smith, was appointed to resume this *ex-parte* inquiry, the result of which, under his direction and conduct, so far as it depended upon him, and concerned your memorialist, could not be doubtful, when he was informed that your memorialist's re-instatement in office was to depend on *his* report.

67.—On the 18th of May, Mr. Smith returned to Tirhoot to resume the inquiry. On the same day he directed the acting magistrate (Mr. Watson) to call before him two persons, vakeels of the court, who during the former investigation, had attended on the part of the magistrate, and one person, who had attended on the part of Ramnarain Muckerjee, and to inform them, that there was no impediment, if they pleased, to their attending his cutcherry. The acting magistrate in reply, objected to those parties attending Mr. Smith's court as spectators, to the neglect of their official duties; and intimated that, if they were required as parties or witnesses, their attendance must be enforced by regular process.

68.—Mr. Smith on the following day, summoned Ràmnarain Muckerjee by his own process, and informed your memorialist, that, as the acting magistrate had objected to the public officers attending, your memorialist was at liberty to depute any other person to appear on his behalf, and to put questions to the witnesses. Your memorialist in reply informed Mr. Smith, that while in office, he had obeyed his requisitions, although he disavowed his right to impose them, that their relative situations at that period, in some degree called upon your memorialist, to comply with the desire expressed by Mr. Smith, on the subject; that he deemed such compliance no longer in any way called for, but that if Mr. Smith would produce his authority to try your memorialist, he would attend his court in person. No notice of this

address was taken by Mr. Smith; and no person attended his resumed inquiry, on the part of your memorialist. Your memorialist here deems it necessary to observe that, Mr. Smith having submitted to the court of nizamut adawlut, a pretended copy of this letter, full of inaccuracies too gross to have been the effect of negligence in the copyist, your memorialist thought it due to himself to solicit government, to call upon Mr. Smith for the original letter, of which a false copy had, by design or accident been transmitted; but government, were pleased to inform your memorialist, that his request was not entitled to any attention.

69.—Mr. Smith has pretended that your memorialist had mistaken his former message, which had not *required* the attendance of any person on behalf of the magistrate, but had merely conveyed an intimation, that as it might be the wish of your memorialist, that some one should attend to see "fair play," your memorialist might depute any persons to attend for that purpose. It may be asked, if the persons had been so deputed, only to look on and see "fair play," why they were allowed to take a part by putting questions to the witnesses; and if "fair play" was meant in any other sense by Mr. Smith, why were those persons throughout, prohibited by him from taking notes, that their employer might be able to judge whether the play had been fair or foul?

70.—But it matters little in what way Mr. Smith understood, or may pretend that he understood the circumstance of the attendance of the vakeels. It would be quite mockery to say, that Mr. Smith's proceedings were more or less *ex-parte*, for the attendance of persons, on the part even of those who were implicated in the charges, (which your memorialist was not) when the manner in which they were allowed to act for their principals, comes to be seen and considered, as it will be in the course of this memorial.

71.—In the course of the inquiry resumed by Mr. Smith, various acts of cruelty on the part of Phikoo Nazeer, and of corruption, on the part of Ramnarain Muckerjee, were deposed to. It will be unnecessary for your memorialist to enter into any defence, personal to himself, on either of those charges. The right honorable the governor general in council, has been pleased to acquit your memorialist of all participation in, or even knowledge of such acts, but at the same time, 'their existence is by the same authority *taken* as proved, and ignorance of their existence, is the offence for which your memorialist was removed from his office. It becomes in this view material for your memorialist, to consider what *has been proved* by Mr. Smith's inquiry.

72.—In respect to the charge of cruelty, Phikoo nazeer having recently undergone his trial, the

observations

observations which your memorialist has to make on this head, will chiefly be reserved until the proceedings held on that occasion, come to be considered. Some remarks on the *manner* in which the charge of corruption, brought against Ramnarain Muckerjee was *proved*, will here be made.

73.—To begin with No. 18, of Mr. Smith's translation of the case of Sheconaut Naick, one of those, which the court of nizamut adawlut selected, as fit to be prosecuted criminally, if supported by credible evidence, and on which Phikoo has since been tried. Sheconaut naick having said, that when money was taken, the dewan's name was used, is asked this question by Mr. Smith:—

*Question*—" Excepting that the persons you have mention-" ed took the name of the Dewan, do you in any other way " know that the Dewan took the money?"

*Answer*—" Whatever was received in the prison house from " the prisoners, on account of security and other pretences, half " of that was concealed by Caulee Buckshee and Phikoo Nazeer, " from the Dewan, and the remaining half made known to him; " and that remaining half was divided into two equal shares, of " which the Dewan took one, and the Nazeer and Buckshee the " other."

Here is a circumstantial detail of facts particularly sworn to, and those who cannot be at the trouble, or who have not leisure to wade through the fourscore pages, which this man's deposition fills, may be of opinion, that the facts so sworn to are satisfactorily proved. It appears, however, that Sheconaut naick never had access to the dewan, never saw him, and that it

it was impossible, he could have any knowledge of the transaction, to the truth of which he swears. The acting judge is, however, satisfied with his answer, and without questioning him, as to his means of knowledge, he goes on to ask, whether the perpetrators of the different acts of oppression, to which he had deposed, were the Bengallees brought to the district by Sir Alexander Seton, &c.

74.—Take another case, that of Oojea Roy, (No. 22.) He relates, that Seeteram *told* him, that he had agreed with Phikoo nazeer, that both of them should be released for 300 rupees. He is questioned thus:—

*Question*—" Were the 300 rupees after all, paid to Phikoo " Nazeer?"

*Answer*—" I did not *see* it with my own eyes, but Seeteram " *said* I have paid the money to Phikoo Nazeer."

*Q.*—" Did he enter into particulars at all, as to how he gave " it and where?"

*A.*—" Seeteram before our release *said*, I sent the money " through Byjoo Roy and Amed Roy."

*Q.*—" Did you see Byjoo Roy and Amed Roy?"

*A.*—" *I did not*."

*Q.*—" Did you afterwards *hear* at all whether they paid the " rupees or not?"

*A.*—" After that I heard nothing, I was ill," &c. [the same witness being asked why he did not complain to the magistrate. Answers, that he was afraid.]

*Q.*—" Had you any dread of dewan Ramnarain too?

*A.*—" I was not in the habit of going to him, that I should " fear him."

*Q.*—" Did you *in your heart conceive* the dewan to have any " thing to do in these matters?"

*A.*—" When the case was brought to a hearing, I *knew* it

" was

" was by virtue of the rupees, and the rupees had been paid to
" the dewan through Phikoo ;"

That is, as Seeteram *told* him *by* Phikoo *through* Amed Roy and Byjoo Roy, which Amed Roy and Byjoo Roy were not produced. With respect to the sum, supposed to have been paid in this instance, Seeteram in his deposition, says, it was 350 rupees, whilst Oojea Roy positively swears it was 300 only. It is to be observed, that Seeteram had fixed himself at Patna, by swearing to the sum being 350 rupees, of which fact it is likely that Oojea Roy was not aware.

75.—Dhoorop Roy's case (No. 52,) is a singular one, and singularly proved. He says, that having agreed to give Phikoo nazeer 2000 rupees, for which Phikoo nazeer had promised to release him, and *make him a Thanadar*, he sent Goordial Roy and Shewuck Roy to his house, at Ramnagur, to procure the rupees; that those two persons, together with four others, namely, Nine Roy, Hundaram Coyle, Bodhee Parban, and Bhukt Roy, brought him 1140 rupees, which he desired them to take to whatever place Ramdyall should point out, that Ramdyall took them to the dewan's house, and that Ramdyall went in with the money. " These six persons
" coming back to me, *said* we have given the rupees
" and my two sons, who were confined were released,
" and my case was brought on, and I was *committed*
" *to the court of circuit;* a wonderful instance of
" the power and efficacy of the rupees administered
" to

"to Ramnarain Muckerjee, and of the influence of "this person over the mind and acts of the judge "and magistrate."

76.—Dhoorop's deposition contains a long story, about a reference being made of this case of bribery, to arbitration, by Ramnarain Muckerjee, from fear of the court of circuit, and which ends in the arbitrator's finding, that the bribe of 1140 rupees had been given. Upon this, Ramnarain's fear of the court of circuit seems, most unaccountably, to leave him, and he very coolly tells them, they may sue Ramdyall in the adawlut, according to usage. In support of this history, Chutter Tewary, one of the arbitrators, is examined, and Mr. Smith puts this question to him, quite in his usual way:

> *Question*—" What did you arbitrators *conceive*, as to what " Ramdyall *might have done with the money*?"
>
> *Answer*—" We *conceived* this much, that he had *probably* " given some of it to *some one else*, and *probably* kept some of it " to himself."

So much for the evidence of the principal act of corruption, charged against Ramnarain Muckerjee.

77.—In the previous parts of this story, in the history of procuring the money, and the paying of it to Ramdyall, the witnesses agree hardly in any one particular. Shewuck Roy, one of the persons who is said to have brought the money, in his deposition (No. 45.) speaks to his having come with Moden Roy, son of Dhoorop, Nine Roy, Bhukt Roy, and Bhodee Parban, and says, that they went straight to

 Ramdyall,

Ramdyall, and gave him the money, that Ramdyall went in with it to the dewan's house, but he denies that he was ever sent for money by Dhoorop, or that he saw Dhoorop, either before or after the money was paid (to both of which facts Dhoorop swears) and says, that he and the four others, immediately on paying the money, returned to Ramnagur. Dhoorop Roy being called upon to explain this, says, that there was *another* Shewuck Roy, who came with the money also, which the deponent Shewuck Roy in his turn, positively denies. But even if this were so, Dhoorop did not pretend, there were two Bhukt Roys or two Nine Roys, with respect to whom the same contradiction appears in the testimonies of Dhoorop and Shewuck.

78.—In the same case Nine Roy (No. 46.) is next examined, and he says, that Dhoorop's letter was to bring the exact sum of 1140 rupees, whereas Dhoorop says, he wrote for 2000. Nine Roy says, in contradiction of what Dhoorop swears, that he did not see Dhoorop, either before or after the money was paid. He also contradicts him in another material circumstance. Dhoorop having been asked, why he did not complain to the court of circuit, when he found, he could not get his money back from Ramnarain Muckerjee, he says, that he had no sooner put his foot forward, to go to the court at Patna, than they sued out a false and deceitful complaint against him, on which he was apprehended. This question was put to Nine Roy.

Question

*Question*—" After the arbitration and settlement about the rupees, was Dhoorop Roy again apprehended?"

*Answer*—" I don't know that he was, and had he been, I certainly should have known it."

79.—The above cases relative to the acts of corruption, imputed to Ramnarain Muckerjee, have been taken indifferently from Mr. Smith's proceedings. The following are some additional *facts*, which are said to *prove* his influence in the affairs of the district, whilst your memorialist held the office of judge and magistrate.

80.—Puboohan Roy being asked who Ramnarain Muckerjee is? Answered, " His name is not " upon the list of public officers, but whatever office " it may be, whether a moonshee, or daroga, or " peon, Ramnarain Muckerjee is *every thing*, there " is no one in *any* thing but Ramnarain Muckerjee," —after several other questions this witness is asked— " Have you ever seen with your own eyes, Ramnarain Muckerjee interfere in public matters? Answer— " I have not." This was a most unfortunate question, for if it had not been put, the whole of his testimony would have been submitted to the superior court, as most decisive legal evidence of the influence of Ramnarain Muckerjee, in the affairs of the district.

81.—Gujrauz Roy another witness, is asked, " do you know any thing of the particulars of Ramnarain's concern and connection with the securities

 " in

" in the prison house of Phikoo, nazeer of the fouj-
" dary?" Answer—" His being concerned in them
" was *notorious*, and that Ramnarain Muckerjee and
" Phikoo nazeer were in league." A similar question with that put to the former, was not risked with this witness.

82.—Jeton Sing (No. 36.) is thus interrogated—
" Do you *conceive* that Ramnarain Muckerjee has
" any thing to do with these oppressions?" Answer
—" In my opinion he has *not*." This is the witness whom Mr. Smith imprisoned, for what he calls insolence. His answer was certainly provoking.

83.—In the examination of Chuttoree Roy (No. 37.) the answer of the witness to one of Mr. Smith's questions, put in the same *legal* way, appears to have been equally unexpected.

*Question*—" Is Ramnarain Muckerjee spoken well or ill of?"

*Answer*—" Well of, and he holds no office, but when
" any one cries out for justice in the road, he, in behalf of that
" person, recommends it to the daroga and the nazeer to do
" what is right."

84.—The object of the following question to Sheckh Nusrut Ally (No. 38.) cannot be doubted, but that object does not appear to have been in the first instance attained.

*Question*—" Did any one else but Phikoo nazeer get a *bad*
" *name*, by these severities, and indiginities, and extortions of
" money?"

*Answer*—" Phickoo nazeer and the *Buckshee* shared the
" power."

This

This question not succeeding, another is put in a form, which with a willing witness, like Sheckh Nusrut Ally could not well fail.

*Question*—" Were people *always* used to go, to Ramnarain " Muckerjee about their cases?"

*Answer*—" Certainly they did."

85.—These are examples monstrous indeed, but uniform with the whole proceedings, of the manner in which the examinations were conducted by the judge of circuit. To prove the case for the prosecution, the witnesses were *led*, in every instance; and to hear-say, report, idea, conception, or belief, the witnesses were all equally examined, and all was equally received as legal evidence.

86.—Such being the latitude given to the examination in chief of the witnesses for the prosecutors, it is material to learn, what was the extent of the liberty to cross-examine, allowed to those who appeared for the accused.

87.—In the examination of Chutter Tewary before mentioned, Punjaub Roy, representative of Ramnarain Muckerjee, asks the witness—

*Question*—" How often have you given evidence in the " foujdarry?"

*Answer*—" In my whole life twice, but a true evidence."

Upon this the court (Mr. Smith) interfered, and addressing itself to Punjaub Roy says—" this is not " proper to put such a question, merely for the pur- " pose of raising a suspicion against the witness. If

" you

"you know of any thing, which may have been esta-
"blished by proof against this person, represent it."

88.—Another witness Gujrauz Sing, in his deposition (No. 35.) relates that he gave Dost Mahomed, nazeer of the dewanny adawlut, 13 rupees for accepting his security in a civil suit, in which he was defendant, and that the case being decided in favour of the plaintiff, he (Gujrauz) appealed, that it became necessary for him, to give in three several securities "and for accepting" says he "these three several securities, I gave 17 rupees at one payment, into the "hands of Dost Mahomed nazeer. On my paying "that, he accepted the security and certified its sufficiency." On the subject of the cross-examination of this witness, to the latter point, the following passage appears on the proceedings of the acting judge, "Deby Dutt (representative of Dost Mahomed) "would here have questioned the witness about the "17 rupees, but adverting to the nature of what the "witness had said, the court (Mr. Smith,) thought it "superfluous and unconnected with the case."

89.—Gujrauz Sahee, (No. 52) in his cross-examination, is asked by Deby Dutt, whether, since he had been at Mozafferpore he had met Doonda Sing and Huldhull Sing? Having answered in the affirmative, the court (Mr. Smith) addressing Deby Dutt says—"If he has met Huldhull Sing and Doonda "Sing, what objection is there in that, and what end "is to be answered by such a question?" Huldhull Sing and Doonda Sing were two of the complainants.

90.

90.—To cross-examine a witness to his interviews with a prosecutor is thus held to be irrelevant, and improper on the part of the accused. The relevancy and propriety of the examination of the same witness, by Doonda Sing the prosecutor, and Mr. Smith the judge, deserve to be considered. Doonda Sing is allowed to put this question, as relevant to the inquiry into the abuses of the Tirhoot jail. "Do you know any thing of the state of the tannahs, the commissionerships, and the acceptance of security?" The last point, certainly within the scope of the inquiry, is very soon lost sight of, and the witness is brought to say all he knows, and all that is *reported*, about the sale of tannahships or commissionerships, and some times in answer to the judge, and some times to Doonda Sing, he tells what he has *heard* about beating the Sladeana (as is done upon a victory) at Ramnarain's house, on occasion of the dismissal of Doonda Sing's complaint at the sudder, and other such *relevant* matter. He ends with a long story seeing, when he went to bathe, a bundle of papers in the Bengallee language tied to a brick, which at times remained at the bottom, and was at other times driven forward by the strength of the current, and which *every body said* was the account book of Phikoo nazeer, which he had sunk at Secunderpore, and which *no body* it seems, thought it worth their while to pick up and peruse, a circumstance much to be regretted.

91.—It has been seen, that the representative of the accused was rebuked by the acting judge, for attempting

tempting to cross-examine a witness for the prosecution, as to his interviews with one of the prosecutors, but this very prosecutor is allowed, without difficulty or objection, to cross examine his *own* witness, to the same point. The evidence of Chuttoree Roy (No. 37:) not turning out so favourably as was perhaps expected, Doonda Sing, with a view to shake the credit of the testimony he had given, enters into a long inquiry, in respect to certain visits paid to him, (Doonda Sing), and certain conversations held with him, by the deponent, so that the prosecutor is allowed to attempt to discredit his own witness, in one case, by examining to the very point, to which in another case, the right to cross-examine is denied to the accused.

92.—The case of Jeton Sing (No. 36.) is somewhat similar. When his evidence is found to be unfavourable, he is not only pressed, in the mode of a cross-examination, with a view to discredit him, but witnesses are called for the same purpose, and thus, contrary to every rule of law and common justice, a witness (Jeton Sing) is put forward to be a good witness, should he swear one way, with the means in hand to discredit him if should swear the other, and those means resorted to and used, when the expected testimony fails.

93.—One witness, among others, called to discredit Jeton Sing is Sheckh Nusrut Ally (No. 38.) who

who being asked by the court, whether he knows any thing of what has passed, between Jeton Sing and Ramnarain Muckerjee, answers,

*Answer*—"I have been an eye-witness to nothing, but I "have *heard* that, since Jeton Sing made his declaration before "the magistrate, there is a great intimacy between him, and "Ramnarain Muckerjee," &c.

*Question*—"Have you *heard* of any other of the complain-"ants any thing, similar to what you have heard of Jeton Sing?"

*Answer*—"I have heard that two or three have thus gone "over to the magistrate," &c.

*Question*—"Have you *heard* any thing of Chuttoree Roy?"

*Answer*—"I have *heard*, that he too, has made a declaration "before the magistrate."

94.—The examination of this witness (Nusrut Ally) affords many other instances of the satisfactory mode, in which *facts* were *proved* in the course of this inquiry, and among others the following:—His deposition sets out by ascertaining, that he never was in the foujdarry prison, and that he can consequently know nothing of what passed there; but being asked by the judge, if he knows of any severities, that *may have* been suffered by others, he answers "the "whole world used to talk of such. I too *heard* of "them as others did." Mr. Smith then puts from the bench this question, which he no doubt considered to be perfectly a *legal* question.

*Question*—"What was it that you *used* to *hear* thus univer-"sally *reported*?"

*Answer*—"I used to *hear* that, from the day Phikoo became "nazeer of the foujdarry, there was a new sort of prison "house established." &c.

95.—The above will, it is conceived, suffice to shew, how far the first rules of evidence, and principles, established in all courts of justice, for the investigation of facts, were observed or attended to by this judge. Upon such evidence, so extracted and so given, it has, by high authority been declared, that acts of cruelty and oppression have, beyond all doubt, been ascertained to have been committed in the jail of Tirhoot; and for his ignorance of such acts, *so proved* to have existed, your memorialist has been adjudged to lose his office.

96.—Having thus observed on the manner, in which this inquiry was conducted by Mr. Smith, and on the nature and effect of the testimony given, in the course of it, as apparent on the proceedings of the judge himself, a few words remain to be said, on the means used to procure that testimony. Mr. Smith had obtained from the sudder dewanny adawlut, a power wholly unprecedented, of bringing in the witnesses and parties by his own process, instead of having recourse to the magistrate for that purpose. When Mr. Smith resumed his inquiry, Mr. Watson had *succeeded* to the office, which your memorialist had held. That he *filled* that office, can hardly indeed be said, whilst Mr. Smith assumed to himself almost every one of its functions. One should have thought Mr. Watson, (a gentleman of acknowledged merit and integrity) a person, not unfit to be entrusted with the execution of any part of the duties, attached to his situation. Mr. Watson, indeed

was

was a man not likely, in the exercise of the public functions of his office, to make himself subservient to the private ends, or to the passions of any one; and in this view your memorialist admits, that he might be a person very unfit to co-operate with Mr. Smith. This gentleman therefore dispatched his own peons, under the guidance and direction of Doonda Sing, Sree Govind Sing, &c. and by them the witnesses were summoned, that is, seized and brought in to give their testimony. These witnesses were kept under restraint until the time of their examination; Sree Govind Sing, Doonda Sing, and their party, were alone allowed to communicate freely with them. The nature of their communications may easily be imagined. Those who had found, that they could commit perjury with impunity, nay, who had found, that it was the way to distinction and favour, were not likely to be very scrupulous, or perhaps very unsuccessful, in labouring to procure others to commit the same crime. Their justification was no doubt, that which they urged at Patna to Jeton Sing, who was a party to the original engagement to complain against your memorialist, but who was a little staggered, when he found that the complaint was to be verified upon oath. "I have given money to no one," said he, "how can I take an oath that I have paid any thing "to any one? Sree Govind Sing said, 'If you cannot "'get security I will get it for you,' I said security "must be had for 2500 rupees, besides a false oath "must be taken. Sree Govind Sing replied 'It is "'the affair of the pergunnah; by this step the per-

"'gunnah will be relieved'" The answer of Jeton Sing to another question, put to him by Doonda Sing (pressing the witness as your memorialist has already stated in the way of cross-examination) to know, what could have been the inducement to present a false petition, contains the true key to the whole of this affair. "They may have reasoned thus "in their own minds; If *we can get* the better of one "*judge*, *every* judge, who *may come hereafter*, *will* "*stand in dread of us*." How far this prediction has been fulfilled, by the triumph of those miscreants over your memorialist, may be judged of by the state, in which that district is to be found at the present hour.

97.—Your memorialist comes now to bring under review, the final report of those celebrated proceedings; given by Mr. Smith to the court of nizamut adawlut. The letter is dated the 23d of September 1807. In the 2d paragraph of this letter he expresses himself thus: "Upon the whole, the outline of what "I think *proved*, is given in the 6th, 7th, and 8th pa-"ragraphs of my letter to Mr. Secretary Dowdes-"well, of the 12th of the month of March." On recurring to those paragraphs, the following are the three points, which Mr. Smith asserts to have been *proved* by his inquiry:—"1st, That great severi-"ties and gross indignities were practised towards "all classes, and (the chief object being to extort "money) particularly with those who were, or "were supposed to be men of wealth. 2ndly, That "those oppressions were systematic and general "throughout

" throughout the district, and that the police daro-
" gahs in the mofussil, acted in concert with the of-
" ficers at the sudder station. 3dly, That the grand
" end, to be answered by this profligate abuse of au-
" thority, was to feed the avarice of one Ramnarain
" Muckerjee, a native of Bengal, and the magistrate's
" private dewan, whom Sir Alexander Seton brought
" with him to the district," &c. These are the points which, implying as they do, criminal neglect at least, on the part of the judge and magistrate, are *facts*, which Mr. Smith takes upon himself to assert, were *proved* by testimony, which, in no other country upon earth, would have been held sufficient to substantiate the most trifling allegation in the course of a civil suit, or to prove any thing, but the misconduct, or the ignorance of the judge, who had allowed such evidence to be given, and to his disgrace and the disgrace of his proceedings, to be recorded thereon as valid and legal testimony.

98.—In the 12th paragraph of his letter to the nizamut adawlut, Mr. Smith after saying, "Upon
" the whole, the point which I was expressly directed
" to inquire, that is, the severities, practised on those
" under restraint, is, in my humble opinion, *proved*,"
with his usual candour, proceeds thus—" How far
" the magistrate had any thing to do with it, or sup-
" posing him ignorant how far a magistrate, under
" whom such proceedings could go on, for two or
" three years, is fit for that important and arduous
" situation, are questions which I am incompetent to

" decide.

"decide. The decision of them rests with govern-
"ment. *I think it clear*, that the natives of Tirhoot "have been oppressed by the public officers of go- "vernment, and by the private servant of the judge "and magistrate."

99.—Your memorialist has not only no hesitation in asserting that which Mr. Smith, with his characteristic humility, only insinuates to government, and respectfully concedes to them as matter for their decision, that the magistrate under whom such proceedings could have gone on, and whose district could have been in the state, in which Mr. Smith, describes the district of Tirhoot to have been for two years, would have been wholly unfit for that arduous and important situation; but your memorialist will go further, and say, that such a magistrate would have merited the most exemplary punishment. If such a state of things, as that, which Mr. Smith asserts to have been proved before him, had existed, the judge and magistrate *could not* have been ignorant of it; and if such outrages had existed in his district, and had been known to him, without any steps being taken on his part to repress them, he would have been a participator in their guilt: nor would his conduct have been much less criminal, than if his had been the hand which applied the torture, or received the extorted rupees; facts proved, according to Mr. Smith, against Phikoo nazeer, and Ramnarain Muckerjee. How far any such facts have ever been *proved* at all, will appear, when the twin proceedings

proceedings of his brother judge, on the trial of Phikoo, come to be considered.

100.—That natives, who are placed in situations of confidence under persons in place and authority in India, will more or less abuse that confidence, when they have it in their power, is a truth evinced by every day's experience; and it is an evil easier to be deplored than remedied. The most honest, the most able, and the most vigilant servant of the company in India, whosoever he may be, will in vain flatter himself, that he is the *only* person, whose sagacity and penetration do not sometimes fail him in this particular. Melancholy indeed would be the condition of those, who are engaged in this honorable service, if they were to be held answerable for every act of baseness, corruption, or oppression, practised by their dependants. Even in our own happy and favoured country, who is the person in authority, who can boast, that under him every thing is pure? Where is the judge who can say, that in the prison to which he commits a criminal or even a debtor, (perhaps under the immediate cognizance of the court of which he is a member) there is no extortion of money, no severity, no oppression? nor will your memorialist assert, that no severity was ever practised in the jail of Tirhoot, whilst he held the office of judge and magistrate of that district. It is not even pretended by his enemies, or by those who have past sentence upon him, that a single complaint was ever made to your memorialist on

the

the subject of those alleged abuses, and this he can, with the safest conscience declare, that no complaint on any subject ever went uninvestigated, or as far as depended upon him, unredressed. Your memorialist further, solemnly declares it to be his conviction, that such a state of things could never have existed without complaint, nor would it have been suffered to exist without investigation and redress.

101.—The very case made for the removal of your memorialist is, that he was ignorant of those oppressions, or in other words, that no complaint of them was ever made to him. Those who know the district of Tirhoot can best tell, whether its inhabitants are that meek, patient, and silently-suffering race, which this state of the case would make them to be. If Mr. Smith's inquiry proves any thing, it proves the most general, systematic (to use his own words) crying oppression, publicly exercised and proclaimed throughout the whole district. It proves corruption in every quarter.—It proves the torture, daily and hourly inflicted under the eyes of the magistrate. The cries of the victims, suffering under the torture, the every sound of the rupees, given to prevent its application, or to effect the release of the sufferer from it, are supposed to be within his hearing. Your memorialist can assert with a confidence, which is hardly exceeded by his faith and reliance on any truth, the most solemnly impressed upon his mind, that such a state of things, as that described

described in the proceedings of Mr. Smith, or in any degree similar, or approaching to it, could never have existed without your memorialist's knowledge; his ignorance of it is to him, the most *decided* proof, that it never had exist nce.

102.—However unwilling your memorialist may be, to occupy more than what is strictly necessary of the nvaluable time of those, whom he has the honor of addressing, the report of Mr. Smith, is so full of mis-statement in every part of it, of assertions not only unfounded in fact, but unauthorized even by his own proceedings, that your memorialist cannot suffer it to pass, without commenting upon it, somewhat more in detail; and the more particularly, as it contains doctrines most dangerous in their nature and tendency, and in the mouth of a judge, most indecent and shameless.

103.—The first thing, which must strike every one, on the perusal of Mr. Smith's letter, and the impression on the mind of him who reads it, will not be easily effaced, is an apology for the crime of perjury, introduced into the 6th paragraph, on the subject of the Patna petitions. The passage is this, "Govern-
" ment's decision I suppose, in this case, means no
" more than that the money was not paid to Sir
" Alexander Seton, or to any one with his privity and
" participation. From the verdict, so understood, I
" am far from meaning to dissent, and the only *de-*
" *fence* I can think of for Bhaugwunt Sing and the

" rest is, that, had they confined their charge to the
" native public officers or to Ramnarain, the private
" servant of Sir Alexander Seton, the decision of their
" cause would have rested with Sir Alexander him-
" self, from whom, whether justly or erroneously, they
" were firmly persuaded, it would be vain to hope
" for justice against those who so entirely engrossed
" his confidence, they had no way of bringing the
" question before another tribunal, but by including
" Sir Alexander himself, among the accused—the
" step they had recourse to, may have been a foolish
" and a desperate one, but I think it well worth con-
" sidering, whether it was adopted wantonly or ma-
" lignantly, or was one they were goaded to by real
" oppression, which Sir Alexander ought to have
" prevented and redressed, and did not."

104.—That the oath, charging your memorialist with corruption, was false, is conceded by Mr. Smith—that it was deliberate and wilful, the view with which it is stated to have been taken, and the reasoning, which Mr. Smith adduces in palliation of it, sufficiently imply. But was it wanton or malignant? these are the points which Mr. Smith thinks worthy of consideration—wanton it may perhaps not have been in one sense, for if ever there was an oath taken with a precise and distinct view of the object to be attained by it, it was the oath in question. As to the malignity of the act, is there none, it may be asked of Mr. Smith, in endeavouring to involve, by a false oath, the innocent in the crime of the guilty,

even

even although the guilty could not otherwise be punished?

105.—Let the case in question be judged of, on Mr. Smith's own statement. To what does it amount? The public officers of a court are accused of oppression and corruption. The accusers believe, that those officers possess an undue influence over the mind of the judge, to whom their complaints against them must in the regular course be addressed. In order therefore, to have those complaints heard before *another* court, they prefer, in that *other* court, an accusation *on oath*, charging the judge with the same crime which they impute to his officers, a crime of the most base and ignominious kind; a charge which if believed, on the oath of the accusers, and of such perjured witnesses, as they may produce, must end in the ruin, disgrace, and infamy of the party so falsely accused by them. Lest the jailor, whom they charge to have been bribed, should escape, they swear that the judge has been bribed also. This attempt by perjury, to fix upon your memorialist, filling the office of judge and magistrate, one of the most disgraceful and odious of crimes, is looked upon by Mr. Smith, as the means, in some degree justifiable, of obtaining redress against the servants of the court, accused of the same crime. "They had no "way of bringing the question before another tribu-"nal, but by including Sir Alexander in the accusati-"on."

106.—In the 9th paragraph of Mr. Smith's letter, to the court of nizamut adawlut, he has the courage to declare himself the champion and defender of persons, whom the court of sudder dewanny adawlut had judged guilty of a conspiracy, and dismissed from office. Those persons, Mr. Smith does not hesitate to tell the court, had been "hardly "dealt with" and he therefore proposes, that the court of nizamut adawlut, as judges of the sudder dewanny adawlut, should re-instate them in their offices. The conspiracy in question, had been set on foot by Deen Oollah, Acber Ally, and other vakeels of the court, at Tirhoot, to obtain the dismissal of all persons, *not* natives of the district, who formed very likely, an inconvenient check upon their conduct.—This conspiracy so declared to be, and so punished by the court of sudder dewanny adawlut, Mr. Smith describes, as "a fair and reasona-"ble agreement, to stand by each other in defending "themselves against outrage and extortion," and that "when Deen Oollah found the vakeels disposed to "desert him, which they did most basely, he was "alarmed, and, from that time, tried to get himself "out of the scrape by lying and shuffling," &c.

107.—This liar and shuffler, it is, that Mr. Smith very modestly proposes to the judges of the court of sudder dewanny adawlut, to restore to a place of trust and confidence in a court of justice. How this liar and shuffler had contrived to conciliate Mr. Smith's favour,

favour, your memorialist will not take upon himself to say. It appears pretty clear, in his depositions before that Gentleman, that he was swearing for the restoration of his Sunnud. In this instance however, Mr. Smith's pleading was unsuccessful. The signing of the "fair and reasonable agreement" was declared by the court of nizamut adawlut, to be "conduct highly "culpable," and Mr. Smith's benevolent purposes were wholly defeated.

108.—In reasoning on the case of Deen Oollah, Mr. Smith returns to his favorite topic—"that the "magistrate's mind," says he, "was unduly biassed "and influenced, in the decision of it, is an opinion "I give reluctantly, but of which I in vain endeavor "to get rid" Well might Mr. Smith feel reluctance in giving that opinion; for, at the very time he gave it, he knew, that the magistrate did *not* decide the cause, and that it was decided by the sudder dewanny adawlut.

109.—It is to be hoped that Mr. Smith did not in the same letter, knowingly advance that, which is a direct falsehood, namely, that Colleechurn, against whom the attack of Deen Oollah had been particularly directed, was a kinsman of Ramnarain Muckerjee. He was in no way whatever related to or connected with him. They were not even from the same district, the purpose, for which the assertion was made by Mr. Smith, is obvious enough; and as the least inquiry

quiry would have satisfied him that it was unfounded, he must be taken either to have advanced *as a fact*, that which he knew to be false, or that, which he did not know to be true.

110.—On the testimony of the liar and shuffler Deen Oollah, and other such *credible* evidence, Mr. Smith holds the influence of the Bengalees over your memorialist, their abuse of his confidence, their impositions on his weakness, and the consequent two year's triumph of meanness, insolence and rapacity, to have been clearly established and proved.

111.—But lying and shuffling do not appear to have been considered, in the eyes of Mr. Smith, as equally venial in all persons. It was necessary to lie and shuffle in the right sense. Let the instance of Jeton Sing another witness, be taken. This man it has been already observed, had joined with the others in petitioning against your memorialist at Patna, and because he would not swear to the truth of what he knew to be a falsehood, Mr. Smith concludes that he had been tampered with. The judge seems to lose all patience when he speaks of this witness—He calls him "a fellow who had the impudence to assert," &c. What the "insolence" was for which Mr. Smith imprisoned Jeton Sing, and for which he had "half a mind" to have given him fifteen stripes, but which he did not do, lest it should have the *appearance of violence*, will in vain be sought for on the proceedings. If the demeanour of the witness can be

be judged of from his answers, as they appear there, it was throughout the whole of his examination decorous, and most respectful towards the court.

112.—By the 13th paragraph of the letter now under consideration, it appears to be conceded by Mr. Smith himself, that no complaints ever reached your memorialist, respecting the alleged abuses in the jail. He was indeed well apprised, that no person, filling the same situation, had ever been so easy of access as your memorialist, to persons of all descriptions, who had complaints to make. It must have been certainly provoking to Mr. Smith, with a temper such as his, and so disposed towards your memorialist, that, after the most minute investigation, he had not been able to find any one, to allege a single instance, in which your memorialist had declined to receive a petition of complaint, or in which access to him had ever been refused to a petitioner. Mr. Smith therefore, in his usual spirit, and with his usual liberality, comments on the circumstance thus—" I do not think the mere re-" ceiving of petitions is of any service, or alone, proves " any disposition to do justice. A man may receive " them without understanding the language in which " they are written," &c. " A man may receive peti-" tions, merely to save appearances, and that it may " not be said he refuses to receive them, and this is hy-" pocricy and trick, and not a disposition to prevent " injustice." He is pleased to add, " I am far from " asserting that any one of these was the case with Sir " Alexander Seton—I merely mean to argue that the

" bare

"bare act of receiving petitions, is a poor and inade-
"quate defence to the charge of injustice, and neglect "of duty." To this facility of approach to your memorialist, on the subject of all complaints, he is forced to give the insidious turn, contained in the above paragraph, in the shape of a general proposition, without daring to maintain its applicability to the case of your memorialist.

113.—Your memorialist will here close his observations on the report of Mr. Smith, by a remark on the 14th par. of it, in which he says—"the court "will not fail to observe, that the evidence I transmit "is *altogether ex-parte*. No evidences have been ex-"amined on the part of the magistrate, or any of the "accused." This state of the question was certainly not unfit to be recalled to the memory of those, whom he was addressing, after having in the whole course of his letter, treated the evidence given, or alleged to have been given before him, as *conclusive*, and the facts therein sworn, or alleged to have been sworn, as clearly, distinctly, and satisfactorily *proved*.

114.—The report of the court of nizamut adawlut to government, on the subject of Mr. Smith's proceedings, is dated the 21st November 1807. On the 11th of May preceding, Mr. Smith had written to that court, for instructions, in respect to the form in which his proceedings were to be transmitted, and his report of those proceedings to be made out; in answer to which letter, the court, on the 23d of the same

same month, informed him, that it would be necessary to transmit his *original proceedings*, with a translation thereof, accompanied by such opinion, as he might consider necessary, in elucidation of those proceedings. On the 23d of August, Mr. Smith wrote to the court of nizamut adawlut, that ten or twelve days before, he had transmitted his *Persian proceedings* with a translation, and that his remarks would follow in a few days. The Persian proceedings transmitted by Mr. Smith, one should, of course, have concluded to be the *original* Persian proceedings, ordered by the nizamut adawlut to be transmitted to them; and so the court of nizamut adawlut state them to have been, for their report to government, of the 21st November, 1807 opens, by saying, that they "submit to government a *copy* of Mr. Smith's letter of the 23d September, together with the *original proceedings* therein mentioned." This circumstance will hereafter appear to be in no small degree material.

115.—The 2d paragraph of the report of the nizamut adawlut contains these words—"the inquiry made by Mr. Smith being entirely *ex-parte*, no evidence having been taken by him, on the part of the magistrate, or of any of the persons accused, the present proceedings consequently, do not furnish grounds for a final determination on any of the cases therein mentioned."—The result, however, of those *ex-parte* proceedings, has been rather singular. An order was given for the public prosecution of Phikoo, accused of cruelty, provided his accusers could produce

credible evidence to authorize his commitment for that purpose. The case of Ramnarain Muckerjee, accused of corruption, was declared, from the improbability of the facts alleged against him, and the variations in the evidence, not to be a case which called for the interference of government. Whilst therefore neither the charge of cruelty against the one, or corruption against the other, was finally pronounced upon, those *ex-parte* proceedings *did* lead to a "final determination" in the case of your memorialist, who was accused of no offence, but to whom ignorance alone was imputed of the alleged, but unascertained, unestablished facts, which constituted those charges.

116.—Ignorance then of abuses which might, or might not have existed, was the crime imputed to your memorialist; and whilst the court of nizamut adawlut, in the 8th paragraph of their letter, go no further than to say, that the proceedings of Mr. Smith afford "grounds of *presumption*" that the representations of the cruelties and oppression were "not without foundation," and whilst, in the 7th paragraph of the same letter, they say, that those proceedings do not "warrant a belief that Sir Alexander Seton "was privy to the abuses complained of," Your memorialist was doomed to undergo a humiliating and degrading sentence, because those cruelties and extortions, which from *ex-parte* testimony, are "*presumed*" not to have been without foundation, "could "not have been practised without early detection, un-

"der

"der an active and vigilant magistrate." Whether or not those cruelties and oppressions ever were practised at all, by the persons accused (without which their detection, it is presumed, could not have been well effected by the vigilance of any magistrate,) is a point on which the same letter of the nizamut adawlut admits, that the *ex-parte* proceedings of Mr. Smith do not "furnish grounds for a final determination."

117.—The 3d paragraph of the letter of the nizamut adawlut states, from the depositions taken before Mr. Smith, that a private jail was established at Tirhoot, "under the immediate direction and controul of Phi-"koo, the foujdary nazeer, in the early part of his "(Sir Alexander Seton's) administration." That any private or other jail was established during the administration of your memorialist, your memorialist utterly denies. The practice prevailed indeed in Tirhoot, which prevailed every where else, previously to the erection of the new jails by government, that persons accused of offences, were carried to the nazeer, and remained in his custody, until they gave bail, if the offence was bailable; or if not, until the magistrate should, on a consideration of their cases, determine, whether or not they should be regularly committed for trial. Under such circumstances, it is probable, that persons who were accused of heinous offences, or any who were turbulent, were confined in fetters, or in the stocks, and the necessity for this, might be greater or less, in proportion as the

house of the nazeer afforded more or less means, of otherwise securing the prisoners contained in it.

118.—Whatever might have been the inclination of your memorialist, to alter the practice, of allowing prisoners thus to remain in the custody of the nazeer, it was wholly out of his power to do so. When your memorialist took charge of the district of Tirhoot, the jail was a mud building, in a ruinous state, and calculated only for a small number of prisoners. Four hundred convicts had arrived, to assist in the construction of the new jail, and the old jail was so crowded, that prisoners under examination, must either have gone at large, or must have been confined in some place other, than the regular jail. Under these circumstances, nothing could be more natural, than that they should remain in the custody of the nazeer at his house. He was the officer responsible for their appearance; and in any other place they would have been equally in his power, if he had been inclined to abuse it. At any rate, the place in which they were detained, was no new place of confinement, it was the place where in similar cases, former prisoners had always been confined under former nazeers.

119.—To return to the report of the nizamut adawlut, your memorialist cannot well say, whether or not, in the 5th paragraph of their letter, they affect to give any credit to the story of a man having died from ill usage, in the prison of Phikoo; and of the unfeeling manner in which an order is said to have been

been given by your memorialist, to throw the body into the river. On the latter point, it must have occurred to the court, that Rungloll and Sheconaut naick, who relate the story, could not have heard the order, alleged to have been given by your memorialist except in open court; and that it was not very likely, that, in open court, such an order would have been given. If the fact had been inquired into, it would have been found, that the person in question, so far from having died of ill treatment, was, (whilst afflicted with a natural disorder) attended, as well by the medical officer of the station as by the native doctor; that his son and other relatives waited on him during his illness, and on his death, performed the usual ceremonies. That he died, before his case could be brought to a hearing, is in no way imputable to your memorialist.

120.—It here occurs to your memorialist to observe generally, in respect to the cruelties alleged to have been committed by Phikoo, that persons in his custody, were regularly visited by the native doctor, and also by the European surgeon, in every case which required his aid; and that it is quite impossible, that such enormities as those charged against Phikoo, could have taken place, without their knowledge. Yet neither in Mr. Smith's inquiry, nor in the subsequent trial of Phikoo, was either of those persons called, to substantiate any one of the allegations of cruelty, although it has been said that the most seri-

ous

ous bodily injuries, were sustained by the prisoners under the charge of Phikoo.

121.—The story of the rape, said to have been committed by one Gour Baboo, alluded to in the 11th paragraph of the letter of the nizamut adawlut, was not told, till more than a year after the man was dead, and was therefore a charge brought when no one was interested to refute it. The assertion, that he was a relation of Ramnarain Muckerjee, is equally false, with the same assertion made in respect to Callee Buckshee, and made for the same obvious reason by the deponent, and repeated as if believed, by Mr. Smith.

122.—Your memorialist does not know, whether or not the inquiry mentioned in the 12th paragraph, as intended to have been made, in respect to the alleged difficulty of obtaining access to your memorialist in this one instance, has taken place. If it has, your memorialist has no anxiety as to its result. It may however be remarked here, that an eagerness on the part of the accusers of Gour Baboo, to obtain access to your memorialist, would at least be a proof of their conviction, that if they had obtained that access, their complaints would have been listened to, and justice would have been done them by your memorialist. This is a little inconsistent, with the reasons usually given by the deponents before Mr. Smith, for not complaining, namely, that it would have been of no service, considering the influence which the native

tive officeers and Ramnarain Muckerjee (who is said to have been the relation and the express protector of Gour Baboo) was known to possess over your memorialist. The attempts said to have been made by the native officers, and by Ramnarain Muckerjee to prevent the accusers of Gour Baboo, from having access to your memorialist, if true, would also prove, that *they* had not so much reliance as might have been imagined, on their influence over the mind of your memorialist, but that on the contrary, they well knew they had it not in their power, to prevent the redress of wrongs, if the complaint of them ever reached the ear of your memorialist. That there could exist, in any case, a difficulty in procuring the hearing of a complaint by your memorialist, is incredible. Your memorialist sat daily in the public cutcherry, where there was free access to all, and he never left it without asking, if any one had any complaint to prefer. But if any difficulty had existed, in approaching your memorialist in court, caused by the native officers, other occasions presented themselves. He walked out constantly unattended, when petitions might, without the possibility of obstruction, have been presented to him, when complaints might have been verbally addressed to him, and the well-known cry for justice, might have been uttered without restraint. Besides all this, where let it be asked, was the court of appeal, where the court of circuit, where the court of sudder dewanny adawlut, whilst for two years, as it has been most falsely and impudently asserted, the "triumph of

"meanness,

" meanness, insolence, and rapacity was complete," in the district under the charge of your memorialist.

123.—Your memorialist will content himself at present, with simply quoting the words of the nizamut adawlut, in the 15th paragraph of their letter, as to the result of the inquiry into the charge of corruption, preferred against Ramnarain Muckerjee. They are as follow—" although from the general tenor of the " evidence adduced against Ramnarain Muckerjee, " there are some grounds of probability, that the " charges against him are not entirely without foun- " dation; the variations in the evidence, and the im- " probability of some of the alleged circumstances, " added to that evidence having been taken *ex-parte*, " appear to us to render it unneccessary to recom- " mend any measures to be adopted against him, on " the part of government."

124.—The court of nizamut adawlut, not having thought fit to profit by the hint, suggested to them by Mr. Smith, and having abstained from recommending any step to government, as necessary to be taken in the case of your memorialist, it rested with government finally to decide on his character, fortune, and future prospects. This decision, of so deep an interest to your memorialist, was given on the 8th of January 1808. After re-stating the grounds, on which government had, on the 23d of March 1807, thought fit to suspend your memorialist from his office; as well as the proceedings of government of the

9th

9th of April, by which they had fully absolved your memorialist from the charge of corruption, which had been preferred against him, the minute states, that government had, notwithstanding the irregularities imputed to your memorialist, and the act which had led immediately to his suspension, entertained hopes, that the "Inquiry ordered to be made into the charges, "preferred against the native officers of the jail of "Tirhoot, would have shewn, that Sir Alexander Se- "ton had not been remiss in his controul over his of- "ficers, or inattentive to the rights and interests of "the great body of the natives. On consideration, "however, of the proceedings at present submitted by "the nizamut adawlut, the governor general in coun- "cil is concerned to observe, that the strongest "grounds exist for believing, that an extensive influ- "ence was possessed, and exercised, for very ill pur- "poses, in the affairs of the district, by Ramnarain "Muckerjee, the private dewan of Sir Alexander Se- "ton, that great delay frequently occurred in en- "tering upon the examination of persons appre- "hended on charges or complaints of a criminal "nature, that the magistrate was extremly remiss in "inquiring into the condition of the prisoners, and that "great indignities, exactions, and cruelties were com- "mitted on the persons confined in the separate prison "of Phikoo nazeer. The governor general in council "further remarks, that the existence of this prison, was "entirely unwarranted by the regulations. In re- "cording the foregoing sentiments, his lordship in "council is aware, that the inquiry made by the act-

 "ing

"ing judge of circuit, has been in a great measure
" conducted *ex-parte*; that it is probable that some of
" the abuses stated to have been committed, may
" have been exaggerated by the deponents; and that
" others might, on a more full investigation, be alto-
" gether refuted. Taking, however, the great body
" of evidence submitted by Mr. Smith collectively,
" it does not appear to government, that the smallest
" doubt can be entertained, that abuses of the nature
" of those above noticed, existed to a great extent, in
" the district of Tirhoot. On a mature consideration
" therefore, of the evils which have arisen from the
" want of due attention, on the part of the judge and
" magistrate, to the conduct of his native officers, com-
" bined with the specific acts of misconduct commit-
" ted by Sir Alexander Seton himself, as above notic-
" ed, the governor general in council is concerned to
" record his opinion, that government would not be
" warranted in re-instating Sir Alexander Seton, in the
" important offices of judge and magistrate of Tirhoot.
" It is accordingly resolved, that he be finally remov-
" ed from that situation."

125.—Thus was sentence past upon your memorialist by an authority, from which in India there is no appeal. Your memorialist is far from meaning to depart from that line of respect, which is due to the supreme government; but he begs leave to put it to the feelings, and to the good sense of every member of your honorable body, whether every notion of public justice, every principle of honor, and of fairness,

between man and man, did not demand; that before visiting with so grievous a penalty upon your memorialist, this offence of alleged omission, this ignorance of abuses said to have existed, it should have been ascertained by a legal investigation; by some thing, more satisfactory than an *ex-parte* inquiry, and above all, an *ex-parte* inquiry so conducted, what part of those abuses really existed, what part of them "had been exaggerated by the witnesses," and what part might have been "altogether refuted."

126.—Upon the faith of proceedings, which the court of nizamut adawlut, the highest judicial authority in India, have declared not to furnish grounds for a final determination on any of the cases therein mentioned, which they allege to contain gross variations in evidence and improbabilities in circumstance, which government itself admits to exhibit testimony, which in parts may have "been exaggerated," and in parts might have "been entirely refuted," your memorialist has been degraded from his station, held forth to the service and to the world, as an object of contempt and odium, and declared for ever incapable of holding again the honorable station which he once filled. This your memorialist respectfully, but with perfect confidence submits to be the state of the question, which was at issue on the record of government itself, of the 8th of January 1808, between that government and your memorialist. A circumstance indeed of a most extraordinary nature, which has since come to light, and to which the attention of your honorable

court is here most anxiously entreated, has in a considerable degree varied that issue, or has, it may perhaps more properly be said, produced one entirely new, between the parties, which must be submitted at the same time to you, to try.

127.—It remains for your honorable court to be informed, that the original of Mr. Smith's proceedings never had been laid, either before the nizamut adawlut, or the governor general in council; and that the direct assertion made by the court, that they had submitted the original proceedings, is not therefore consistent with the fact,—your memorialist is willing, however, to believe, that this misstatement of the nizamut adawlut was not intentional; and that it originated in mistake, from their having really considered the proceedings transmitted to them, to be original proceedings. That Mr. Smith had the strongest interest in deceiving, both the nizamut adawlut and government, in this particular, will not it is conceived, appear very doubtful to your honorable court, when the following most extrordinary circumstance, which came to the knowledge of your memorialist, some months after the decision of government, shall have been considered.

128.—It will be remembered, that the nizamut adawlut directed Mr. Smith to forward to them his "original proceedings;" and that Mr. Smith forwarded to them what he called his "Persian proceedings," without expressly stating whether they were originals

or

or copies. That he meant them to be considered as originals, appears amongst other things, from the circumstance, of the usual words "true copies" not being affixed to them. That these words were purposely omitted, your memorialist does not entertain a doubt. But whether the nizamut adawlut were really deceived by Mr. Smith's letter, and by the appearance of the documents, or whether they contented themselves, with referring to Mr. Smith's translations, without inspecting the Persian proceedings at all, certain it is, that they considered them, and that the government considered them, to be no other, than the original proceedings of Mr. Smith. The minute of government of the 8th of January 1808, concludes by ordering—"that the papers submitted by the nizamut adawlut in the *original*, be returned to the court, with the request of the governor general in council, that they will furnish *copies* of them for the records of government."

129.—Your memorialist was dismissed from his office, on the supposed legal testimony of witnesses, examined during the inquiry, conducted by Mr. Smith. That testimony is exhibited on the depositions, alleged to have been taken on that occasion. If your honorable court can now feel surprise, at any act of Mr. Smith, it will be to learn, that he either neglected, or did not think fit to require of the witnesses, to sign their depositions; and that all the material depositions, on the authority of which, *as* legal evidence, government came to a decision against your memorialist,

memorialist, stand as the original record of the proceedings of the judge, unattested and unauthenticated by the signatures of the witnesses, whose evidence it is pretended they contain.

130.—This fact which was, as your memorialist submits, decidedly fatal to the legality of Mr. Smith's proceedings, as well as of the resolution of government, past on the faith of them, was communicated to the Secretary, in a letter from your memorialist, dated the 22d April 1808. This letter was written in answer to one, which your memorialist had shortly before received from him, dated the 16th of the same month, in which, after rebuking your memorialist for the terms in which he had animadverted on the proceedings of Mr. Smith, the secretary to government states, that "the conduct of that gen-"tleman, appears to government, so far as a judgment "can be formed of it, from the proceedings submit-"ted by him, to be perfectly correct and proper. "These sentiments," continues the secretary to government, "his lordship in council would have sup-"posed, must have been manifest to you, from the "nature of the decision, past by government on that "occasion, *as it cannot be supposed*, that such a deci-"sion would have passed, (grounded as it partly was "upon Mr. Smith's proceedings), had his conduct "appeared to be in any respect irregular or objec-"tionable."

131.—This communication led your memorialist to encourage a hope that, on its being proved, that Mr. Smith's proceedings were altogether illegal and invalid, government would have taken into consideration, the justice of the claim urged by your memorialist, to be restored to his office, and that the resolution of the 8th of January 1803, into which the governor general in council had been entrapped by misrepresentation and deceit, would have been rescinded. In this hope your memorialist was not the less sanguine, from the circumstance of government having required of your memorialist, to offer as a specific charge against Mr. Smith, the fact which he had taken upon himself to assert. This having been done by your memorialist, in a letter of the 6th of May, an inquiry was ordered by government into the circumstance so alleged, the result of which was communicated to your memorialist, in a letter from the secretary to government, dated the 24th of June 1803, enclosing the copy of a letter from the register of the nizamut adawlut, dated the 15th of the same month, together with copies of two letters from Mr. Smith, dated the 19th and 23d May, addressed to the other judges of the provincial court of Patna.

132.—In his letter of the 19th of May, Mr. Smith states, that he has no "distinct recollection on "the subject, but even supposing," says he, "that "the signatures of the witnesses have been omitted in "any, or even in all of the depositions, I cannot help "thinking

"thinking it a very weak objection to their validity," and afterwards he says, "that as in ninety-nine cases "out of a hundred, they, the witnesses, know nothing "of the language in which the deposition is taken, "their signing can be taken as nothing beyond a mere "form."

133.—In his letter of the 23d of May, Mr. Smith encloses the reply of his moonshees, to the purwannah issued by him to know, "why many of the depositions were not attested by the witnesses?" This reply concludes by stating that "the omission, "wherever it has occurred, is exclusively to be attributed to the great pressure of business, and to the "expedition which was required." Mr. Smith himself, in his letter of the 23d of May 1808, says, that he has examined the original depositions with the senior judge, and finds, that about 15 or 16 of them are signed or marked, and the rest have neither signature nor mark. The number of witnesses examined by Mr. Smith, nearly fifty, including those, whose pretended depositions he sent to the nizamut adawlut, and those which he withheld. Mr. Smith concludes this letter, by submitting that it appears, from the documents he sends, and the explanation given in his former letter, "that there is no "particular or unusual cause to be assigned for the "non-appearance of the signatures and marks, and "that many of those, to whose depositions there is neither signature nor mark, *may have* contented them-"selves with merely touching the pen, as is frequent-

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"ly the case, and that their touching the pen may "have been admitted as tantamount to a signature or "mark."

134.—Mr. Smith's explanation was perfectly satisfactory, both to the court of nizamut adawlut and to government. The former, in the letter of their register, addressed to the secretary to government, dated the 15th of June, observe, that, "adverting to the circumstances, stated by Mr. Smith, and observing, "that every page of the proceedings, and every deposition of the witnesses, is regularly attested by "Mr. Smith, the court are of opinion that the accidental omission of the signature of many of the witnesses to their depositions, is of little importance, "and does not affect the legality of the proceedings, "or the measures which were adopted by government, in consequence of the investigation conducted by Mr. Smith." The secretary to government in a letter to your memorialist, dated the 24th of June 1808, transmitted to him accordingly, the following communication. "The right honorable the governor "general in council is of opinion, that the omission "of a part of the witnesses to sign their depositions, "does not at all affect the legality of the proceedings, on which the resolutions of government, regarding your removal from the office of judge and "magistrate, was founded."

135.—Your memorialist must confess, that, although experience had taught him to be little san-

guine in his hopes of succeeding in any application, connected with the subject of Mr. Smith's inquiry, which might go to affect the justice of the decision, which had past upon the authority of it, still he had not altogether despaired of prevailing upon government to revise a judgment, which had been given on the faith of spurious documents, of invalid and illegal, if not fabricated, evidence. The character of government would not surely have been implicated, by their annulling a sentence, the injustice of which was not wholly imputable to them. It was therefore with some surprise, that your memorialist received the above communication, both as it respected the decision itself, and the reasons assigned for it. It appeared to him a little extraordinary, that a positive breach of a regulation of government, relating to one of the most solemn acts of judicial procedure, should be declared by the highest judicial authority, and that declaration confirmed by government itself, to be of little importance, and not at all to affect the legality of the judicial proceedings, in the course of which that breach of the law was committed. Regulation 4th of 1797, section 7th, directs, that "all "examinations of parties and witnesses, shall be taken "down in the language and character, in which the "person examined, may desire to have the same re-"corded, and such person, whether party or wit-"ness is to be allowed to read the same when fi-"nished; or if unable to read, it is to be read "to him, after which, if he admit the record to "be correct, he is to affix his name or mark to it,

"and

"and the judge, magistrate, or other officer, before "whom such examination may have been taken, is "to certify the same, under his official seal and sig- "nature on the original record." This is a text which requires no comment. That its provisions are of "little importance," your memorialist cannot easily allow; nor does he quite understand, upon what ground it can be argued, that a non-compliance with those provisions "does not at all affect the legality" of a judicial proceeding, in which any of those essential forms had been purposely disregarded, or by the negligence of the judge, past over and omitted.

136.—Your memorialist felt himself bound to convey to government, as strongly as his respect for their authority would permit, his sentiments on the above decision; and accordingly he addressed on the 11th of July 1808, to the secretary to government, the following letter, to which he begs leave to call the attention of your honorable court.

"*TO GEORGE DOWDESWELL, ESQ.*

"Sir,

"I have the honor to acknowledge the receipt of your letter of "the 24th of June, inclosing copies of two letters addressed by Mr. "Smith to his colleagues of the court of circuit at Patna; also of a "letter addressed to you, by the register of the court of nizamut "adawlut; and further, communicating to me the resolution which "the Right Honorable the Governor General in Council, on a con- "sideration of those documents, had been pleased to come to on the "charge

"charge preferred by me against Mr. Smith, in my letter of the 6th "of May.

"2.—From the circumstance of the right honorable the go- "vernor general in council, having thought it right to direct, that an "inquiry should be made into the matter submitted by me, to his "consideration in that letter, I was induced to hope, that the result "of the inquiry (whatever it might be) would have been deemed to "be of some importance.—It has at any rate, afforded me the op- "portunity of knowing, that, when the right honorable the gover- "nor general in council was pleased to pass the minute of govern- "ment of the 8th of January, by which I was removed from my "office and station, he was wholly unacquainted with the fact, "(whatever be its importance) that the greater part of the written pa- "pers transmitted by Mr. Smith, as the legal depositions of witnesses, "taken before him, were unauthenticated by the signatures of those, "whose depositions they were alleged to be.—When government pro- "nounced a judgment affecting so nearly the honor, and charac- "ter, and fortune of an individual, they believed no doubt, that "judgment to be grounded on facts ascertained, and established by "valid and legal testimony.

"3.—The proceedings of Mr. Smith had been so often de- "clared by government, to have been perfectly regular, that I "certainly entertained very sanguine hopes, that, upon the disco- "very of this most glaring irregularity, (to say no more of it) go- "vernment would have seen reason to revise a sentence, founded on "the supposed regularity of those proceedings. The profound res- "pect which I feel for the authority of the right honorable the go- "vernor general in council, restrains me from expressing more than "a sensation of surprise at the decision, which you have been in- "structed to communicate to me.

"4.—I feel it however a duty which I owe to myself, and to "every servant of the honorable company in India, most solemnly "to protest against the doctrine inculcated by the judges of the "court of nizamut adawlut, in the opinion which they have given, "that the 'accidental omission of the signature of many of the

"'witnesses

" 'witnesses to their depositions, is of little importance, and does not
" 'affect the legality of the proceedings or the measures, which
" 'were adopted by government, in consequence of the investiga-
" 'tion conducted by Mr. Smith.'

" 5.—I take the liberty, in the first place, to observe that the
" proceedings of Mr. Smith consist of nothing but depositions, real
" or pretended; and that therefore the legality of the proceedings,
" and the legality of the depositions mean one and the same thing.
" —The court of nizamut adawlut must therefore, either be prepared
" to say, that depositions unattested by the signatures of the witnes-
" ses are legal, *as* the depositions of those witnesses, or they will for-
" give me for not admitting, even upon their high authority, that
" they are legal, *as* the proceedings of Mr. Smith.

" 6.—With all the deference which is due to the opinion of the
" judges of the court of nizamut adawlut, I do very confidently main-
" tain, that such depositions are in their very nature, and frame, so
" totally illegal, that they cannot be received or used as evidence,
" and that they are wholly devoid of operation or effect, in any
" court of justice, or before any tribunal or authority, whose pro-
" ceedings are pretended to be guided by principles of justice or
" rules of law. A deposition is the record of the testimony of a
" witness, taken upon oath, reduced into writing in his presence,
" and acknowledged by him to be true. This acknowledgment is
" conveyed by the signature of the witness, without which it is the
" mere note or minute (at the best) of the officer of the court. It
" may or it may not be the real testimony of the witness, it cannot
" be his deposition. The far greater part of the supposed deposi-
" tions, on the faith of which I have been removed from my office
" of judge and magistrate, turn out to be nothing else than the re-
" port, true or false of Mr. Smith's moonshees, of the evidence taken
" before Mr. Smith.

" 7.—On the authority of Mr. Smith's moonshees, (for Mr.
" Smith ackowledges, that a matter of so little importance did not
" attract his attention) the omission of the signatures is assumed to
" have been wholly accidental. I shall only observe, that if the
" pretended

" pretended depositions were forged and fabricated by Mr. Smith's " moonshees, I should not expect any other answer from them, than " that which they have given. But I beg leave to call the attention " of government to the validity, and above all, to the *decency* of the " excuse, which has been given and received for the omission in " question. 'The omission, wherever it has occurred, is exclusively to " 'be attributed to the great *prsssure of business*, and to the expedition " 'which was required.' Thus government are told, that the inquiry " which they directed to be made, and which they must have meant " (as they meant justice) to be conducted with all due deliberation " and care, was so hastily and precipitately gone through, that the " most essential forms and rules of judicial investigation were neg- " lected, and the huddled minutes of such an inquiry were trans- " mitted to government, as the regular and solemn proceedings of a " judge.

" 8.—But it is said, by the court of nizamut adawlut, that every " deposition and every page of the proceedings is attested by Mr. " Smith. This must be understood of the copies transmitted to the " nizamut adawlut, for the originals are not there;—that the proceed- " ings, or what is the same thing, the supposed depositions, now at " the nizamut adawlut, are true copies of the papers which Mr. Smith's " moonshees wrote, I have no interest in contesting; but what I de- " ny is, that there is any proof that they *wrote* what the witnesses " *said*. But if Mr. Smith had signed and attested every original de- " position, and every page of the original proceedings, which he may " have done, still that attestation is not the attestation which the law " requires; and I may perhaps be pardoned in objecting to the ad- " mission of any act of Mr. Smith's, as evidence in any case, in " which I am concerned, farther than the law compels me. One " thing appears to me to be quite clear, that, if Mr. Smith attested " the original depositions, he did not read them. If he had, the omis- " sion could not have escaped his observation, and his abundant can- " dour would not have allowed him to conceal it from government. " Does any one imagine that such an irregularity in any proceeding " of mine, would have eluded the glance of his scrutinising eye, or " would have failed to call forth some animadversions on the nature

" of

" of such an irregularity, and some slight insinuation of the suspi-
" cions to which it might give rise?

" 9.—Whatever particular reason there may be, for excepting " Mr. Smith from a rule applicable to other judges, I beg leave to " observe, that in general, there exists this strong reason why the " attestation of the judge, should not supply the place of the signa- " ture of the witness, that the deposition signed by the witness is fre- " quently the only check which exists on the conduct of a partial " or corrupt judge: a judge whom weakness, whom avarice, malig- " nity, or other bad passion may lead out of the path of judicial rec- " titude. An appeal from the decision of such a judge, would be a " mockery, if the evidence were to be taken on the reports or attes- " tations of his creatures, or of him.

" 10.—But it may perhaps be argued, that there is sufficient in " the depositions regularly and legally taken, to shut me out from all " right to expect a revision of the sentence of government, as being " obtained by insufficient and illegal evidence. To this I should " answer, that the judgment of government was expressly stated " to be founded on the great body of the evidence taken collectively, " and at this moment what part of that evidence is legal, and what " part of it is illegal, government are wholly uninformed. Mr. Smith " has thought it a matter of two little importance to specify, and the " court of nizamut adawlut to inquire, what particular depositions " were signed, and what were not signed by the witnesses, or in other " words, what were depositions and what were not.

" 11.—I trust that government will not pass unnoticed a remark " of Mr. Smith's, which has called forth no observation from the " court of nizamut adawlut. That gentleman says—' that as in " 'ninety-nine cases out of a hundred, they (the witnesses) know no- " 'thing of the language, in which the depositions are taken, their " 'signing can be taken as nothing beyond a mere form.' I submit " to government, that it is the bounden duty of the judge, to have " the deposition explained, in such cases, to the witnesses, and that " the contrary practice is pregnant with the greatest mischief. But " even the signature of the witness in every case, affords this securi-

"ty, that evidence cannot *afterwards* be fabricated, and substituted
"in the place of that which was taken down at the time of exami-
"nation.

"12.—Having now abandoned all hopes of procuring a revisi-
"on of the judgment of the right honorable the governor general in
"council, and having, as I conceive, without a hearing, and without
"a trial, on proceedings admitted to have been *ex-parte*, and now
"proved to have been irregular, upon evidence, which I hold to be
"illegal, invalid, and inadmissable, been removed from a high and
"honorable station, I feel it due to my character, which I hold
"dearer than life or fortune, to appeal from the decision, which I now
"conceive to be final, of the right honorable the governor general in
"council. I have therefore only farther to entreat, that you will lay
"before the right honorable the governor general in council, my res-
"pectful request, that the whole of the proceedings in this case, to-
"gether with a memorial which I am now preparing, may be trans-
"mitted to the court of directors.

"I have the honor to be, &c. &c.

"CALCUTTA, (Signed) "A. SETON.
"11th July, 1808."

137.—This letter remained wholly unnoticed by government, but the court of nizamut adawlut, in reply to a subsequent letter of your memorialist, calling upon them to correct their misstatements to government, respecting Mr. Smith's proceedings, declared, that they saw no reason to alter the sentiments they had expressed to government "the more especially" say they, "as you do not state, that the recorded de-
"positions of the witnesses are, in any instance,
"contrary to the evidence given by them, before Mr.
"Smith."

138.—This passage of the letter of the nizamut adawlut, strikes your memorialist as quite ludicrous, when it is recollected, that, in the course of Mr. Smith's *ex-parte* inquiry, he took special care, that no one should make a single note of his proceedings, by which it might have been ascertained, whether the evidence given was the same, as that which should be afterwards recorded as the depositions of the witnesses. It is not necessary, your memorialist conceives, that *he* should prove the papers sent by Mr. Smith to contain an *untrue* account of what passed before him. It is sufficient, that there is neither legal nor satisfactory proof given, that they contain a true one. To call them "recorded depositions" is a perversion of terms. They are neither records nor depositions. They are the minutes, true or false, of Mr. Smith's moonshees; as the translations of them, are the translations true or false, of Mr. Smith.

139.—It appears to your memorialist most singular, that that rigid censor of all irregularity, the court of nizamut adawlut, should have failed to animadvert, on what they deem an omission or neglect of Mr. Smith, at least *as* an irregularity. Let the irregularity, charged as a head of accusation against your memorialist, in one of the letters of the nizamut adawlut, that of having *omitted* to make a formal record of the restraint put on the person of Huldhull Sing, by placing a peon in his house, be compared with this omission or neglect, (if such) of Mr. Smith's; an irregu-

 larity,

larity, which wholly vitiates and renders to all intents and purposes invalid, in any court of justice, the whole proceedings of a long, important, and what was no doubt, intended to be a *judicial* inquiry. If the effect of this irregularity, whether unforeseen or intended, be taken into consideration, it has been to procure a judgment, deeply affecting the fortune and character of an individual, by imposing on a superior authority, those worthless documents as legal and authentic records.

140.—In the scale indeed, of Mr. Smith's irregularities, the irregularity in question may not be considered to mount very high. That gentleman is now charged before the nizamut adawlut, with having *committed* an act of irregularity so outrageous, that it would scarcely be credited of any one, who did not feel himself above all controul; who did not, in his confidence in that powerful protection, by which he has hitherto been shielded, spurn at all restraint, and set at nought all superior authority. Two persons of the name of Rajcomar Sing Rajepoot, and Sheckh Golam Jellanee, were tried by Mr. Smith, as judge of circuit, at the sessions held at Shahabad, in December 1808. Those men were charged with having been concerned in two affrays, in taking forcible possession of lands. They were convicted of those *offences*, and sentenced by Mr. Smith to seven years imprisonment, with a fine to government; and in case of non-payment of the fine, to suffer an additional imprisonment

of

of two years, making eventually nine years. Warrants were issued to the magistrate by Mr. Smith, for the execution of these sentences, which had been solemnly promulgated in open court. The sessions having closed, the law officer proceeded to Patna, and Mr. Smith went to Chuppra, for the purpose of conducting an *ex-parte* inquiry, ordered it is said, on accusations preferred by himself, against the judge and magistrate of that district. The charge against Mr. Smith is, that he issued from Chuppra a supplementary warrant, ordering, that in addition to the former sentences, passed on Rajcomar Sing Rajepoot and Sheckh Golam Jellanee, they should each receive 30 lashes of the korah (a most merciless and disgraceful punishment,) and that they should be banished from the district. The corporeal punishment has actually been inflicted. The proof of the charge is stated to rest on Mr. Smith's proceedings, and the fact is said not to be contested. It is now twelve months since this *irregularity* is charged to have taken place, yet Mr. Smith continues unremoved, and even unsuspended!

141.—But to return, your memorialist having long ago abandoned all hope of obtaining redress from the company's government in India, it remains for him to state the cause of the delay, which has occurred in sending in his memorial, for the purpose of being transmitted to your honorable court. It appear-

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ed to him to be material (whatever might be the opinion of government or of the nizamut adawlut,) that it should be ascertained *legally* by the trial of Phikoo nazeer, whether or not those abuses and cruelties, alleged to have been committed by the native officers in the jail of Tirhoot, for having been ignorant of which, your memorialist was dismissed from his office, *ever had* existence. He was therefore induced to wait the result of the proceedings, to be had against Phikoo, who had resigned his office two years before the period of Mr. Smith's inquiry, with the sanction of the nizamut adawlut, and had retired to his home in Bengal, 400 miles from Tirhoot. In the month of October 1803, he was brought from thence to answer the charge made against him. In December and the following months, proceedings took place before the magistrate and his assistant, which ended on the 7th of April, in the commitment of Phikoo, for trial. This trial took place on the 14th of the same month, before Mr. Hawkins, second judge of the court of circuit, for the division of Patna, the result of which was a sentence of seven year's imprisonment, pronounced against Phikoo.

142.—Accustomed as the members of your honorable court must be, to the conduct and demeanour of English judges, and to the rules and principles, which guide the proceedings of English courts of justice, you must have perused with considerable surprise, the specimens, which the foregoing pages have

afforded

afforded of judicial procedure and judicial conduct in India. Your memorialist cannot however think, that even by the examples which have been furnished, your minds can be wholly prepared for the disgraceful scene, which was exhibited on the trial now in question.

143.—Your memorialist can add little to the sentiments, which a perusal of the proceedings, on that occasion, led him to express to government in a letter to their secretary, dated the 14th of September last. He begs leave therefore, to convey those sentiments to your honorable court, in the form in which, under the impression of the moment, they were imparted by him to government. The length of the letter may require some apology from your memorialist, altho' the subject matter in a certain degree, required it. The letter is as follows:

"*G. DOWDESWELL, ESQ.*

"Sir,

"Having been furnished with copies of the proceedings held "by the magistrate of Tirhoot, and by the second judge of the "court of circuit of Patna, on the commitment and trial of Meer "Phikoo, on a charge of cruelties and exactions alleged to have "been committed by him, on persons in his custody, as nazeer of the "foujdarry court of Tirhoot, whilst I filled the office of judge and "magistrate of that zillah; I think it my duty to bring under the "notice of government, the irregularities which appear to have taken "place in the course of those proceedings, and to submit, as I humbly do, to the honorable the vice president in council, that it im-

"ports

" ports the honor and credit of the administration of British justice in " India, that those proceedings should be revised by a superior au- " thority.

" 2.—I shall endeavour to state, as shortly as the nature of the " case will allow me, the grounds on which I conceive, that Meer " Phikoo has been sentenced to an imprisonment of seven years, " on a charge *not proved*, and in the investigation of which, the first " rules and principles of the system of law, by which it was the " right of the prisoner to be tried, as well as the letter and spirit of " the regulations, by which the British government in India has pro- " vided for the due administration of that law, have been grossly " violated.

" 3.—It will be within the recollection of government, that, in " consequence of an inquiry made by Mr. Smith, into certain abuses " and cruelties, alleged to have been committed by the native officers " in the jail of Tirhoot, the court of nizamut adawlut was directed " by government to make a selection of such cases, as appeared to " them the most fit to be prosecuted criminally, against the persons " accused of the above offences. The instructions of the court of " nizamut adawlut, for carrying into effect the directions of govern- " ment, were given in a letter addressed by the register of that court, " to the judges of the court of circuit for the division of Patna, under " date the 21st of January 1808. In the fifth paragraph of that let- " ter, twelve persons were named in the margin, who had been ex- " amined as complainants by Mr. Smith, and whose depositions taken " before that gentleman, were considered by the court of nizamut " adawlut, to contain charges such as, 'if supported by credible " 'evidence, would afford sufficient grounds for instituting a criminal " 'prosecution against the persons accused;' and it was therefore " directed, that measures should be taken for the apprehension of " Phikoo, and others, who were the persons accused in those depo- " sitions. The sixth paragraph of the letter of the register of the " nizamut adawlut, was in the following terms. 'When these persons " 'shall have been apprehended, the magistrate will proceed to examine " 'such of the complainants in question as are to be found, and to take

" 'any

" 'any evidence, which may be adduced, by them, in support of their
" 'accusations, bringing the accused persons to trial before the court
" 'of circuit, if sufficient grounds shall appear to warrant the measure.
" 'In such case, the prosecution must be conducted by the vakeel of
" 'government, under the directions and controul of the magistrate,
" 'as required by the orders of the governor general in council.'

" 4.—Phikoo nazeer and Rumjoo Jamadar, two of the persons "accused, having been apprehended in the month of October 1808, "and the twelve persons, named in the letter of the register of the "nizamut adawlut, having been summoned to attend as complain- "ants, five of the twelve appeared, namely, Rungloll, Sheconaut "Naick, Bhyroo Naick, Mohun Kooar, and Bucksheе Munder, and "on the 13th, 14th, 15th and 20th of December, their depositions "were taken by Mr. William Fleming, acting magistrate of Tirhoot. "On the 10th and 16th of January 1809, Meer Phikoo put in his "several answers to the complaints made against him, and Rumjoo "Jamadar put in his answer to the complaint of Rungloll, all of "which answers, wholly denied the charges made against them.

" 5.—On the 13th of March last, proceedings in this case were "held before Mr. Cunnyingham, magistrate of Tirhoot;—present She- "conaut Naick and Bucksheе Munder, two of the complainants, and "Phikoo and Rumjoo defendants. Sheconaut Naick gave in to the "magistrate, the names of his witnesses, Nouruttee Pasban, Omud "Kooar, Bijou Chowdry, and Ramdial Taccoor, four in number, "who were to prove as he stated, the cruelties and oppressions com- "mitted upon him; and the names of Ajet Naick, Assa Duffadar, "Oudeen Sing, and Koondar Lall, also four in number, who were to "prove the corrupt receipt of money by Phikoo. He afterwards "however stated, that Oudeen Sing and Koondar Lall were not to "prove the criminality of Phikoo, but the receipt of money by the "*Dewanjee*. On a question being put to Sheconaut Naick by the "magistrate, he said, that the witnesses were the same, in support "of the complaint of Bhyroo Naick. Bucksheе Munder gave in the "names of Domun Sing, Bushun Mehajaun, and Fakera Duffadar, "as witnesses, who were to prove the complaint made by him.— "Neither Mohun Kooar, nor Rungloll were present; but from the

" proceedings

"proceedings of the magistrate it appears, that Ooman Kooar, Bhy-
"ram, and Muhungo Dhok, were the witnesses named on behalf of
"the former; and Dootree Mul Bulwent Duffadar, and Durbaree
"Lall, on behalf of the latter.

"6.—On subsequent days, Ackent Naick, and Assa Duffadar
"were examined by the magistrate, in support of the complaints of
"Sheconaut Naick and Beeroo Naick; Ooman Kooar and Bhyram
"were examined on the part of Mohun Kooar; and Dooman Roy
"or Sing, on the part of Buckshee Munder. No witnesses ap-
"peared, or were examined by the magistrate in support of the
"complaint of Rungloll.

"7.—The proceedings of the magistrate of the month of April,
"record it as his opinion, that the witnesses Ooman Kooar and Bhyram,
"were biassed in favour of the complainant, Mohun Kooar, and that they
"were *little to be credited*, but as it was very likely, that they would
"corroborate points to which Dhurrum Loll and Imrut Loll would
"depose, it was ordered, that, Imrut Loll should be summoned, and
"that, as Dhurrum Loll was a foujdarry writer in attendance on the
"court of circuit, his deposition should be taken on the morrow,
"when the court of circuit would not sit. On the 7th of April, Mo-
"hun Kooar was called upon by the magistrate to state, whether or
"not he knew, where Imrut Loll was to be found, to which he re-
"plied, that Imrut Loll was gone to Napaul.—Dhurrum Loll (for
"what reason does not appear,) was not examined either before the
"magistrate, or the court of circuit.

"8.—No further witnesses having appeared to be examined,
"Meer Phikoo was on the 7th of April, committed by the magistrate
"for trial before the court of circuit, and the following is the trans-
"lation of the record of his proceedings on that occasion: 'Al-
"'though the witnesses who have given evidence in this case, are them-
"'selves complainants, for which reason they are not in the magis-
"'trate's opinion, *so credible*, that the whole of their evidence can be *be-*
"'*lieved*, yet as from the affidavits of the complainants upon oath,
"'and the depositions of the witnesses, a *suspicion* arises of Phikoo the
"'defendant, having, whilst he was foujdarry nazeer of zillah Tirhoot,
"'been

" 'been guilty of cruelties on such persons as were confined in his
" 'prison, and that he has taken bribes from them, therefore it ap-
" 'pears to the magistrate, expedient to make the said Phikoo over
" 'for trial, before the court of circuit; therefore it is ordered that
" 'the case (distinct from that of Rungloll complainant, which to this
" 'period is not completed) be made over for trial to the court of
" 'circuit, and recognizances be taken in the usual mode, for the at-
" 'tendance before the superior court, of the complainants and their
" 'witnesses; and whereas in the judgment of the magistrate, no
" 'criminality has been establised against Rumjoo defendant, there-
" 'fore it is ordered, that Rumjoo aforesaid be enlarged.'

" 9.—It will be remembered, that the instructions of the niza-
" mut adawlut, which instructions the magistrate no doubt had be-
" fore him, when the above order was given, required, that '*credi-*
" '*ble* evidence, in support of the depositions' of the complainants,
" should be given before the magistrate, to warrant his instituting a
" criminal prosecution, against the persons accused. The charges,
" on which Phikoo was committed for trial by the magistrate, were as
" follow—1st, The charge of Mohun Kooar, supported by the tes-
" timony of Ooman Kooar and Bhyaram, both of whom were de-
" clared by the magistrate himself to be *biassed witnesses,* and their
" evidence little to be *credited.* 2dly, The charge of Sheconaut
" Naick, and Bhyroo Naick in support of which two witnesses had
" been called; Ajeet Naick, who swore to its being true, and Assa
" Duffadar, who swore contrary to Ajeet Naick in every particular.
" 3dly, The charge of Buckshee Munder, in support of which he
" had produced one witness only, Domun Roy, and this witness it
" will be found, spoke *directly* to no one fact against Phikoo. 4thly;
" The charge of Rungloll, which was unsupported before the magis-
" trate, by the testimony of any witness of any description; and al-
" though in the above order, it is directed to be kept distinct from
" the others, yet finally, Phikoo was committed for trial on that
" charge also, on the single deposition of the complainant. Such was
" the credible evidence in support of the different charges, on which
" the

" the magistrate on the 7th of April, made over Phikoo for trial to
" the court of circuit.

" 10.—In a few days however, the chief difficulty was remov-
" ed. The disabilities, under which the complainants laboured, and
" which rendered their evidence in the character of complainants,
" (in the opinion of the magistrate) not so credible, as that the whole
" of it should be believed, were entirely done away, by an order
" issued by the court of circuit to the magistrate, to convert those
" complainants into witnesses, and to alter to that effect, the calendar
" to be delivered in to the judge of circuit.

" 11.—This most extraordinary act is stated, on the proceed-
" ings of the magistrate, of the 14th of April, in the following terms.
" 'Prior to this, on the 7th of April of the present year, the afore-
" 'said defendant (Phikoo) was made over for trial to the court of
" 'circuit. This-day, has arrived an original proceeding of the
" 'said court, bearing this-day's date, directing, that as the case
" 'now stands, it cannot be tried, and that the magistrate, having
" 'made the government vakeel complainant, he do make Mohun
" 'Kooar and Sheconaut Naick, and Bhyroo Naick, Buckshee Mun-
" 'der, and Rungloll, (which five of twelve complainants are in at-
" 'tendance), together with the witnesses they may have cited to
" 'corroborate their affidavits, witnesses on the part of the vakeel of
" 'government, and that by Monday next, he send Phikoo defen-
" 'dant to this court for trial, and that he write out and send ano-
" 'ther complete calendar, according to the recommendation afore-
" 'said.' The order of the magistrate then follows to the above
" effect.

" 12.—I trust, I am justified in calling the serious attention of
" government, to this strange and novel proceeding; a proceeding,
" which cannot I apprehend, have any precedent on judicial record.
" To make the attorney in the cause a party, and to make the par-
" ty a witness, and this too *pendente lite*, after some of the most
" solemn proceedings in the suit, had been gone through, is justified
" on the ground, that, otherwise 'the cause cannot be tried,' or in

" other

" other words, because without this exercise of authority, the ac-
" cused 'could not be *convicted*.' The recorded grounds of the pro-
" ceeding, are the the best comment on its object, nature, and ten-
" dency.

" 13.—I humbly submit, that the act of the court of circuit on " this occasion, was both repugnant to the principles of the Maho- " medan law, and inconsistent with the instructions of the court of " nizamut adawlut on the subject.

" 14.—The rule of the Mahomedan law is, that the com- " plaint, or charge of the complainant, in a criminal case, whether re- " duced into the form of a deposition or not, must be proved by the " evidence of two witnesses at least. The complaint or charge itself, " forms no part of that evidence: It is a mere statement of mat- " ter, which must be substantiated by the testimony of *others*. In- " deed the complainant, by the Mahomedan law, is an incompetent " witness to prove the charge.

" 15.—The instructions of the court of nizamut adawlut were, " that the magistrate should examine the complainants, and take any " *evidence* which might be adduced by them in support of their *ac-* " *cusations*; so that the charge was to arise out of the examinations " of the complainants, and that charge was to be supported by the " testimony of witnesses; and if there then appeared sufficient " grounds to bring the accused to trial, the prosecution was to *be* " *conducted* by the vakeel of government, under the directions and " controul of the magistrate. What prosecution? the prosecution of " Sheconaut Naick and others, complainants, against Phikoo and " others, defendants; in which it was directed, that the government " vakeel should *act* for the prosecution. But those instructions af- " ford no authority for making the government vakeel complainant, " or for altering the relative situations of the parties to the suit. Still " less for affording, beyond what the ordinary rules of law allowed, " any facilities for the conviction of the prisoners; even though it " should turn out, that the case could not otherwise be tried.

" 16.

" 16.—I come now to the proceedings held by the court of " circuit on the trial. On the 14th of April the court opened, present " Mr. Hawkins, the second judge. When the preliminary forms " had been gone through, a representation was made by Tofeeloola, " the vakeel of government, which sufficiently shews the idea, he " had of the character in which he appeared. It states, that he was " directed by the magistrate to *plead in the cause*, and therefore pray- " ed that an investigation might take place, into the oppression com- " mitted by Phikoo, the defendant. Phikoo being called upon, for " his answer, denied positively the whole charge, and prayed that his " answer, given before the magistrate might be perused, which was " accordingly done. The government vakeel, styled now the com- " plainant, was then directed to produce whatever *witnesses* he had " to support his charge, when he prayed that the statements on oath " of Sheconaut Naick, Bhyroo Naick, Mohun Kooar, Buckshee " Munder, and Rungloll, might first be taken. The examination of " Sheconaut Naick formerly complainant, now a witness, was confined " to two questions: one was, whether he had ever complained of the " oppression or extortion of Phikoo? He answered that he had not " complained; but that he had been summoned by Mr. Smith, and " that he had stated truly to him, upon oath, what had passed, and " that his deposition might probably be with the *presence*. The pro- " ceedings then state, that the deposition of Sheconaut the witness, " having been translated into the Hindee language, was explained to " him, and he was asked, 'Has whatever you stated, in respect of " ' the oppression of Phikoo Nazeer, and other servants of the fouj- " ' darry, before the gentleman of the circuit (Mr. Smith) been ex- " ' actly taken down in this paper, or is there any difference between " ' the tenor of this, and your statement?' He answered, that the " statement was correct. Bhyroo Naick, Mohun Kooar, Buckshee " Munder, and Rungloll, were examined in the same general way, " to the correctness of the statement made by them before Mr. " Smith. None of them were *re-examined to the facts*, by the judge " of circuit; nor were they questioned at all, as to the correctness " of what they had stated before the magistrate.

" 17.

" 17.—The first thing to be here remarked is, that those persons appeared before the judge of circuit, by virtue of his own order, in the character of witnesses, and that therefore he was bound to examine them, according to the rules laid down for the examination of witnesses, by a court of circuit in other cases. The depositions of those persons, taken before the magistrate, were before the court, yet the judge did not put a question to them, as to the truth of what they had said before the magistrate, whose proceedings were the only legal record before him; but he read to them, the proceedings of Mr. Smith (which neither from the nature of that gentleman's inquiry, nor from the instructions of the nizamut adawlut, could in any way be evidence against Phikoo, or be intended to form any part of the proceedings, on his trial), and asked them merely whether what they had said before Mr. Smith, was truly stated or not in those proceedings. One has the more difficulty to discover the reason, which induced the judge to deem the proceedings of Mr. Smith, more legal evidence against Phikoo, than the proceedings of the magistrate, when we consider, that the statement, called depositions, which appear on Mr. Smith's proceedings, were unattested by the deponents, and whether true or false, fairly or unfairly taken, were taken in the absence of Phikoo, and in an inquiry to which he was no party. The proceedings of the magistrate were liable to none of these objections, some sufficient reason can no doubt be adduced by the judge of circuit, for the preference given to the statement, taken out of the usual course before Mr. Smith, to that taken in the usual course before the magistrate, and that explanation, government may perhaps see it fit to require.

" 18.—In respect to those who were legal witnesses, and who had never been complainants, they were examined to the truth of what they had said before the magistrate, but in a way rather singular, if any part of the intention of an examination before a court of circuit be, to sift into and distinguish, between what has been truly and what has been falsely sworn before the magistrate. The first witness, Assa, being asked, whether he knows any thing of

" the

"the oppressions committed by Phikoo, answers, that he had stated "all he knew before the magistrate, and that his deposition was pro-"bably with the *presence*. His deposition being then explained to "him in the Hindee language, he is asked 'Is this statement cor-"'rect?' The answer is, 'this is my statement, I know nothing "'further.' To the other witnesses the same sweeping question is "put, to which one uniform answer is returned, in the affirmative, "and then their depositions taken before the magistrate, are imme-"diately referred to, and read. If a court of circuit were confined "to this sort of examination, it would be neither more nor less than "a court for *re-swearing* affidavits.

"19.—The purpose of a re-examination before the court of cir-"cuit, and the mode in which it is to be conducted, are distinctly "laid down in the 7th section of the 4th regulation of 1797, 'The "'courts of circuit are to be careful to notice on their proceedings, "'any material differences between the depositions of the same wit-"'nesses before them, and the magistrate, and are to question the "'witnesses thereupon, and record their answers, but the deposi-"'tions taken before the magistrates, are not to be read before the "'court of circuit, in the presence of the persons who gave the same, "'until they shall have been *re-examined* before the court of circuit.' "Nothing can be more evident than this, that the re-examination "here mentioned, means a re-examination at *large*, into all the facts "to which the witness had been examined before the magistrate. "How otherwise could any 'material differences' be noticed, be-"tween the depositions before the magistrate, and those before the "court of circuit? It is very unlikely, that any such should arise, where "the witness before the court of circuit, is barely asked 'Is your state-"'ment on oath before the magistrate, correct?' If a leading ques-"tion be that, which the above regulation defines it to be, a question "'suggesting an answer, or having a tendency to such suggestion,' "it would be difficult to imagine a question, which more directly "suggests its answer, or more compendiously and conveniently gets "at the subject matter of the answer suggested, than the principal, "and generally the only question, put by the judge of circuit to the "witnesses, on the trial of Phikoo.

"20.—I come now to consider more particularly, the nature "and extent of the matter, which was admitted as evidence on the "trial, and shall examine, how far upon that evidence, such as it is, "there appears any thing to warrant the futwah of the law officer, "that the charge of cruelty and extortion against Phikoo was proved.

"21.—I have already observed on the unauthorized act of the "judge of circuit, in converting, during the progress of the suit, the "complainants into witnesses, and in making the pleader in the suit, "the complainant, on record, an act, which I submit, is fatal to "the whole proceedings; but for the present, I shall consider the "act as strictly regular, and as authorized by the instructions of the "nizamut adawlut, and in that case, I contend that the evidence of "those constituted witnesses, was taken in direct opposition to the "provision of the 4th regulation of 1797.—This regulation admits "of no former depositions being used, but the depositions taken be-"fore the magistrate, and even those, not until the witnesses shall "have been re-examined to the facts, and their depositions taken a-"new by the court of circuit. On this trial, without any re-exa-"mination at all, certain alleged, unattested statements, made be-"hind the back of the party accused, upon an *ex-parte* inquiry tak-"en by Mr. Smith, are introduced as legal depositions, and this not "in the absence of more legal and satisfactory documents; but "whilst the regular depositions of the parties, taken before the ma-"gistrate, in the presence of the prisoner, lay upon the table of the "judge, and seem to have been passed over as papers wholly un-"connected with the cause. Upon this alone, I conceive that the "statements of the former complainants, might be put out of the "question altogether, and might be rejected as evidence illegally "taken, supposing the witnesses, who gave it, to have been other-"wise legal and competent. The charges would then rest upon the "testimony of the witnesses, whom those complainants adduced in "support of their respective charges. But I will take the whole "case as it stands, and suppose every thing done in the course of "the trial, to have been done regularly, and still I contend that the "futwah of the law officer, is wholly unauthorized by those pro-"ceedings, and that upon those proceedings, the charge against "Phikoo is *not* proved.

"22.—The charge against Phikoo is cruelty and extortion, and "the first case, in which it is attempted to be made out, is that of "Sheconaut Naick and Bhyroo Naick, which may be considered as "one. None of the witnesses, whose names Sheconaut Naick had "given in to the magistrate, to prove the cruelties exercised upon "him, and Bhyroo Naick, were produced or examined either before "the magistrate, or before the court of circuit.

"23.—The case then is this, Sheconaut Naick and Bhyroo "Naick were committed on a charge of a murder, and Phikoo ad-"mits that, like other persons charged with that crime, they were "put in irons. They also relate, that they were put in the stocks, "and in this they are supported by one of their witnesses, Ajeet "Naick, brother to Sheconaut, and nephew to Bhyroo. The other "witness, Assa Duffadar, knows nothing of the stocks, and speaks "only to the fetters, which he says were put upon them, because "they were charged with murder. But the question is not, whether "they were in fact put in irons, or in the stocks, or not; for either "might, according to the circumstances, be the fit mode of securing "them, but the question is, whether or not they were used as the "means of extortion? The charge being such, as might justify ei-"ther mode of detention, it will require satisfactory evidence to "shew, that the irons or the stocks were applied, not to secure the "prisoners, but to extort money. The use of the fetters and the "stocks, form the extent of the cruelty attempted to be given in evi-"dence, in the cases of Sheconaut Naick, and Bhyroo Naick.

"24.—The principal agents stated by Sheconaut Naick and "Bhyroo Naick, to havs been employed by them, in their treaties "with the Nazeer, for the purpose of procuring their release through "the means of money, and in the payment of the money for that "purpose, are the two witnesses, Ajeet Naick and Assa Duffadar. "The chief knowledge of the complainants as to the actual payment "of money, is stated by them to be derived from those witnesses, so "that the testimony of Sheconaut Naick and Bhyroo Naick on this "head, amounts in general to nothing, but hearsay; and the charge "of extortion, on the proof of which alone, any pretence for the "charge of cruelty can be founded, will appear ultimately to rest,

"wholly

" wholly on the evidence of Ajeet and Assa. One of them, Assa, " positively disclaims all knowledge, of any payment of money or " treaty, for the payment of money, to Phikoo or any other person, " and in most of the circumstances, which attend those parts of the " transactions, of which Sheconaut and Bhyroo state themselves to " be cognizant, the evidence of Ajeet differs materially from the " statement, both of Sheconaut and Bhyroo.

" 25.—One of the principal charges against Phikoo, on the " head of extortion, in the case of Sheconaut Naick and Bhyroo " Naick, is the taking of 25 rupees in part of 100, which were to be " paid down in ready money to Phikoo. The sum demanded by " Phikoo, is stated to have been 500 rupees, for which he engaged to " bring to a hearing, the cause of Sheconaut Naick and Bhyroo " Naick, and to procure them their liberty; but they were to begin " by advancing 100 rupees of that sum, the rest to be afterwards " settled between them. Sheconaut, in his deposition before Mr. " Smith says, that Ajeet Naick endeavoured to get the 100 rupees, " but could not get more than 25, which he procured at the kothee " of Ramsoonder Bengalee, and carried them to the Nazeer at night. " Bhyroo, before Mr. Smith, tells the same story with this addition, that " Assa Duffadar went to the kothee of Ramsoonder Bengalee, along " with Ajeet Naick. Sheconaut, before the magistrate, also says, that " Assa Duffadar went with Ajeet to Ramsoonder Bengalee, for the " money. Bhyroo, before the magistrate, says, that the sum of " 25 rupees having been brought, by Ajeet and Assa, from the " kothee of Ramsoonder Bengalee, to them, at Assa's lodgings, it " was taken at night to the nazeer by Assa and Ajeet. The on- " ly witnesses to the fact, of paying the money to Phikoo, are there- " fore Ajeet and Assa, one of whom (Ajeet) affirms, and the other " (Assa) flatly negatives that fact; so that taking the credit " of Ajeet, the relation of the complainants, and the credit of " Assa to be equal, the charge stands as without evidence at " all. But in fact the credit of Ajeet is materially affected by the " statement of Bhyroo; Ajeet positively swears that when he went " with the money at night to the nazeer: the nazeer was at his " window, and called to him; 'I went up to him,' says Ajeet, 'and

" 'the

" 'the nazeer asked, 'have you brought the money?' I answered, 25 " 'rupees, have been procured. The nazeer required the 25 rupees " 'and I paid the amount *to him*, engaging to pay the remainder the " 'following day.' Bhyroo Naick, before the magistrate, relates the " business in a very different way, 'Ajeet Naick took the money, " 'with Assa Duffadar, to Nazeer Phikoo. Immediately, Ajeet return- " 'ed and said to me, 'Assa made me stand, at the out side of the " 'dwelling, and *he* himself went into the house to Nazeer Phikoo, with " 'the money, and paid the money to Nazeer Phikoo.' This is one " of the *facts* in evidence, by which, according to the futwah of the " law officer, the charge is 'proved against Phikoo Nazeer.'

" 26.—There is another sum of money, said to have been ex- " torted by Phikoo, or his servants, from Sheconaut and Bhyroo, not " for his own use, but for the use of Ramnarain Muckerjee, whom " they style the dewan. Sheconaut, before Mr. Smith relates, that " they had agreed with Assa Duffadar, to give 400 rupees for " their discharge; that 200 rupees had been deposited in Bhekar- " ry's kothee, and 100 had come from their house. The 300 rupees " were sent by Ajeet Naick and Ramdyal Taccoor, to Oudannee " Duffadar, that Oudannee Duffadar and Assa Duffadar, went " to the door of Ramnarain Muckerjee, and took the money " from Ajeet and Ramdyal, and having counted it, sent A- " jeet and Ramdyall away. Bhyroo in his statement, before " Mr. Smith, says, that *he* accompanied those persons to the door of " the dewan's house. Before the magistrate, Bhyroo says, that " the sum *sent* to the dewan was 400 (not 300) rupees, which Ajeet " brought from the village to Assa's lodgings, from whence the " money was taken to the dewan's house. He makes no mention " before the magistrate, of *his* having accompanied them, and he " differs from Sheconaut, not only as to the amount of the money, " but as to the manner in which it was procured. It is to be ob- " served, that of the two witnesses, Assa and Oudannee, who could " alone speak to the actual payment of the money to the dewan, " Assa only is produced, and *he* positively denies the payment of " that or any other sum of money through his means, or to his know- " ledge. Ramdyal, who could have spoken to the carrying of the

" money,

" money is not produced, and Ajeet, the only other witness besides " Assa, and Oudannee, does not say one word of his having gone, with " the money to the dewan's door. On the contrary, in his deposi- " tion before the magistrate, he states, that he left Sheconaut and " Bhyroo in confinement, and went home, and in this manner he " ends his deposition, when the magistrate asks him this question. " 'At last, how did the complainants get their release?' answer— " 'They paid 400 rupees to the dewan, and got their release.' He " evidently speaks of this, as of a transaction which took place in " his absence, and in which he was not directly concerned. So that " in fact, the actual payment of the money to the dewan, is disprov- " ed, and the carrying of it to his house for that purpose, is not prov- " ed at all.

" 27.—There is another payment spoken to, of 100 rupees, as " having been made after Sheconaut and Bhyroo were ordered to " be enlarged on security; but before their security was approved " of. This money Sheconaut says, he gave to Bhyroo, and went to " Secunderpore, and does not speak to the actual payment of it of " his own knowledge. So that this fact rests on the statement of " Bhyroo, who before Mr. *Smith*, says, that he gave 'the 100 " 'rupees through Oudannee Loll to the old Buckshee, who lived " 'within the enclosure, which surrounds the dewan's house.' Be- " fore the magistrate he says, that Oudannee Loll, Assa Duffadar, " and he, went to the lodgings of the Buckshee, and that he on the " way, set apart two quarter gold-mohurs, and that the sum was " settled at 92 rupees, and that of this, the Buckshee gave him back " four, which four he presented as a nuzzer to Phikoo, on his ap- " proving the security. So that Bhyroo not only varies in his state- " ments, before Mr. Smith and the magistrate, as to the sum paid " to the Buckshee, but his memory, after a lapse of several years, " furnishes him with a new fact, which had formerly escaped it, " the payment of a nuzzer of four rupees to Phikoo. It is farther " to be remarked, that, however consistent the story told by Bhy- " roo might be, it is wholly unsupported by evidence, or rather it " is negatived by the evidence produced to support it; for Assa,

" the

" the only witness who is called, denies all knowledge of that, or " any other corrupt transaction of the kind.

" 28.—In the more trifling charges against Phikoo, such as the " receiving the nuzzer, or salamee of one rupee, and the taking kid, " and other provisions furnished by the complainants, at a feast " given by him on the weaning of his child, the same contradictions, " and the same defect of proof will be found; but I trust it cannot " be necessary, to adduce any futher instances to shew, that Phikoo " has been most unjustly and illegally convicted of the charge made " against him, by Sheconaut Naick, and Bhyroo Naick.

" 29.—The next charge is that of Mohun Kooar, who before " the magistrate, gave in the names Ooman Kooar, Bhyaram, and " Muhungo Dhok, as the witnesses to prove his complaint of cruelty " and extortion, against Phikoo. Ooman Kooar and Bhyaram were " examined before the magistrate, and are the persons, who are stat- " ed on the magistrate's proceedings, to be *biassed* witnesses, and their " evidence little to be credited. Ooman Kooar was the brother, " and Bhyaram the near relation of Mohun Kooar. Mohun Kooar in " his statement says, that besides being put in the stocks, a board " was placed on his breast, and pressed down with great force. " Ooman Kooar and Bhyaram, who were to prove the whole of " Mohun Kooar's case, say nothing of this act of severity, so that " it rests wholly on the statement of Mohun Kooar, and the " credit which ought to be given to him on this point, may " be judged of, by a reference to his deposition before " Mr. Smith, where he says, that besides the placing a plank on " the breast, of the prisoners, cold water was sprinkled upon their " bodies; but upon the judge observing, that in the hot weather, " of which the witness then spoke, the sprinkling of water, would " be a 'source of comfort and enjoyment, and not an act of severi- " 'ty,' he answers—'the sprinkling of water is in truth a mis- " 'take. It did not take place before me.'

" 30.—The charge of Mohun Kooar reduces itself, therefore, to a " charge of extortion, two distinct acts of which are sworn to by him " against Phikoo. He was imprisoned, he says twice. In his deposition

" before

"before Mr. Smith, he states that on the first occasion, he paid 40 "rupees to have his cause brought to a hearing; that this sum was "settled *with Phikoo himself,* and paid to him by Bhyaram, his "(Mohun's) brother. In his deposition before the magistrate, he "states that the sum was fixed at 43 rupees, *through* Golamee Jema- "dar, and that the 43 rupees were accordingly paid by him (Mohun "Kooar) to the nazeer. Bhyaram, before the magistrate, says, the "sum was 43 rupees; but unluckily, Mohun Kooar's deposition be- "fore Mr. Smith, which states it to be 40 rupees, was the evidence be- "fore the court of circuit, which the deposition of Bhyaram, making "it 43, was produced to corroborate. The sum alleged to have been "extorted by Phikoo, on the second imprisonment of Mohun Kooar "is 32 rupees; but the sum is the only particular, in respect to this "payment, in which Mohun Kooar and his witnesses do not flatly "contradict each other, as Mohun Kooar does himself. In dis depo- "sition before Mr. Smith, Mohun Kooar says,—'I gave him, (Phi- "'koo) 32 rupees, which was as much as my brother Bhyaram had "'brought with him.' Before the magistrate he says, he got the "money from Ooman Kooar. Before Mr. Smith, he says, he was re- "leased on the security of Domun Sing Coyte; before the magis- "trate, that it was on the security of Imrut Loll he was released. "Ooman Kooar, and Bhyaram say, that 14 rupees were taken from "Ooman Kooar, and 18 rupees from Bhyaram, making the 32. Mo- "hun Kooar before the magistrate, states, that he took the whole "money from Ooman Kooar, and carried it with Imrut Loll to the "Darogah Nyeemoolas' *bungalow,* which was the nazeer's sitting "place, and *there* paid it into the hands of the nazeer. Ooman Koo- "ar swears, that he (the witness) Bhyaram, Muhungo Dhok, "Mohun Kooar, and Fuqueera Duffadar, went to the *house* of the "nazeer; that Mohun Kooar and Fuqueera Duffadar went *upstairs* to "the nazeer, leaving others below, and that when Mohun Kooar "came down, he *told* them he had given the rupees, and that their "release was effected on the security of Imrut Loll. Bhyaram "tells the story in this way: 'The nazeer was *sitting on a* cot, and "'the whole of the rupees were placed upon the cot. The nazeer "'*counted and took the same.* After which, the security of Imrut Loll "'was taken, and we were released.' Inconsistences so glaring,

"require

"require no comment; nor do I feel it necessary to adduce other "similar instances, with which the depositions, in support of this "charge, are filled.

"31.—This next case is that of Buxy Munder:—Before Mr. "Smith, he swears, that after he was taken up, he remained four or "five days in the house of Fuqueera Duffadar, that the nazeer then "sent for him, and demanded nuzerana, and that upon his represent- "ing, he was without means, the nazeer ordered him to be dragged "away, and put in irons; that he was accordingly put in irons, and "remained in irons for fifteen days; that at length the jemadar put "his feet into the stocks, and that being brought to the point of death, "he sent for Domun Sing, who accordingly came, and gave the "jemadar a rupee, (which he got from the boy who attended him, "Buxee, and which had been given by him to the boy, to buy vic- "tuals with), and prevailed on the jemadar to take Buxy Munder's "feet out of the stocks:—So that by his account before Mr. Smith, "Domun Sing was not sent for, and did not come to him, till *twenty* "*days of his confinement* had elapsed; but by his story before the ma- "gistrate, it would appear, that Domun Sing came to his relief, on "the *very day* on which he was apprehended, before the magistrate. "Buxy Munder states, that on being taken up, he was carried "before the nazeer, who made him over to the charge of "Ramjoo the jemadar, who *immediately* put him in the stocks, "that he called for water, but could not get it; and that he then "sent for Domun Sing, who got him released from the stocks, and "took him to the house of Fuqueera Duffadar; that he remained "there 5 or 7 days, and was afterwards carried to the jail, and again "put in irons, and the stocks. Before Mr. Smith he states, that he "sent 'word of his condition' to Bishin Mahte, and that Pooran, "his (Buxy's) brother, having executed a bond to Bishen Mahte "for 12 rupees, Pooran procured that sum, and brought it to him. "Before the magistrate he says nothing of the bond; but says, that "Pooran went to Bishen Mahte, and that Bishen Mahte *himself, came* "with the money in the evening, and that in the presence of Bishen "Mahte, and Pooran, he paid the money to Ramjoo jemadar. Whe- "ther Phikoo ever got this money or not, he does not pretend to say;

"and

" and the fact of its being paid to the Jemadar, rests wholly on " the statement of Buxy Munder himself; neither Pooran, nor Bis- " hen Mahte, whom he mentions as witnesses to the transaction, " having been produced. The only witness called by Buxy Mun- " der, is Domun Sing; who says that Bishen Munder, not Pooran, " was sent to him by Buxy Munder; that he went and found him " ' with both his legs in the stocks, and senseless, for want of meat " ' and drink,' which supposed want of food, is inconsistent with the " story told by Buxy Munder, before Mr. Smith; namely, that " Domun Sing took a rupee from a boy who waited on him, and " who cooked his victuals, and which rupee had been given to " the boy, for the purpose of buying victuals with. So that Buxy " Munder had both the means of getting victuals and a person to " cook them. Indeed, Buxy Munder himself makes no complaint " of want of food, but of drink only; although it does not appear, " why the boy, who waited upon him, could not get him the one " as well as the other. Domun Sing had also been examined " before Mr. Smith, when he stated, that Buxy Munder, when he " was released from the stocks, paid to the jemadar *four rupees*, and " that he was then delivered over to the charge of him (Domun) and " that he remained under his charge till the case came on, when no- " thing was proved against him and he was released. In answer to a " question put by Mr. Smith, Domun Roy says positively, that be- " sides those four rupees, nothing more was paid by Buxy Munder: " In no one fact do Buxy Munder and his only witness, Domun Roy " agree, except, that Buxy was in the stocks; which may, or may " not, have been the case. Philkoo says, that in cases of murder de- " coity, and theft, it was usual so to secure persons charged with " those crimes for the first night, until their cases were reported; " that Buxy Munder was sent in upon a charge of theft, and that " his case being reported, he was ordered to be put in irons. That " the case of Buxy Munder was not supported by the evidence of " Domun Roy, appears to have been the opinion even of the law " officer, who does not mention in his fatwah, the name of Domun " Roy, the only witness brought by Buxy Munder, although he " declares the case of Buxy Munder to be *proved* as well as the " others.

" 32,

" 32.—The only remaining charge is that of Rungloll, whose " case was made over by the magistrate to the court of circuit, on " the bare statement of Rungloll himself, in which statement, it must " have been evident to the magistrate, that he was perjured, if what " he swore formerly before Mr. Smith was true. In his deposition " before Mr. Smith, he enters into a detail of the cruelties which " were exercised upon *him* by Phikoo and his servants, whereas be- " fore the magistrate, he positively denies, that any cruelties were " exercised upon him at all; but says, that cruelties were exercised " upon *others*. Before the court of circuit, his credit is further blast- " ed by his acknowledging what he calls an *error* in his *deposition*, " before Mr. Smith, where it is stated, that he paid fourteen rupees " in cash to Phikoo, and gave an engagement for eleven more. Be- " fore the magistrate he stated, that he paid 5 rupees and gave an " engagement for 20 more; and this is the story which he wishes " now to be believed.

" 33.—On a reference to the deposition of Rungloll before Mr. " Smith, it will appear evident, that what he terms an *error*, can be " nothing less than an act of downright *perjury*. The particular " sums (14 rupees and 11 rupees) occur repeatedly in his depositi- " on, and he states the manner, in which he discharged his engage- " ment for the latter sum, by borrowing it from a person of his own " cast. I should be ashamed to take up time, in observing further " on the evidence of this infamous person, who has sufficiently pub- " lished his own perjuries. If any thing connected with the admi- " nistration of justice, could be deemed ludicrous, it would be the " futwah of the law officer, which declares a charge to be *true*, as " having been *proved* by a deposition, which the deponent declares " to be false.

" 34.—Six witnesses were examined before the court of circuit, " in support of the charge made by Rungloll, the greater part of " their examinations has no connection with the charge against Phikoo, " but relates to a charge of rape, made against Gour Baboo, thanadar, " which crime Rungloll states himself to have been active in prosecut- " ing, and to which he attributes the oppression he underwent. None " of the six witnesses speak to any act of cruelty on the part of

" Phikoo,

" Phikoo, or those employed by him. Bhola, indeed, the first wit-
" ness, says that Rungloll, the morning after his confinement, shew-
" ed him his back, and told him that peons had beat him by order
" of the nazeer. This, which would not be evidence against Phikoo,
" if Rungloll did say so, is in direct contradiction to the amended
" evidence of Rungloll himself, that he suffered no ill treatment
" whatever. Bhola proves no one act of extortion, and as to severi-
" ty, he, as well as all the other witnesses, negative the fact of Rung-
" loll being so much as kept in irons. In the deposition of Munsa,
" the second witness, the name of Phikoo does not even occur.
" Bhutton Roy, the third witness, relates nothing which can be
" deemed evidence against Phikoo: He says he heard the cries
" of Rungloll, on the first night of his confinement. The answer
" to which, is Rungloll's deposition, that he did not undergo any ill
" treatment. Bhutton Roy says that Rungloll sent to him, for four
" rupees which he had of his, which he brought, and that Rungloll
" wrote to his house for 20 rupees more, which the witness procured
" and paid to Rungloll. Rungloll *told* him he paid the whole 25
" rupees to Phikoo. Maheput, the fourth witness, says, that
" Bhutton Roy came to him for five rupees, which he had of
" Rungloll's, saying, that Rungloll wanted them, that *he* (Maheput)
" went with Bhutton Roy, and gave Rungloll the five rupees, and
" they found Phikoo with Rungloll, and that Rungloll, in his pre-
" sence, paid Phikoo the five rupees, and gave a bond for 25 rupees;
" so that, if the testimony of this witness be true, Bhola must have
" *seen* all this transaction, whereas Bhola only says, that Rungloll
" *told* him he had paid the 25 rupees; but the evidence of Maheput
" is directly negatived by the statement of Rungloll before the ma-
" gistrate, in which he says, that when he paid the five rupees to
" Phikoo, no person was present but Bulwunt Jemadar. In respect
" to the bond, given by Bulwunt for 20 rupees, as stated by Rung-
" loll, where was the necessity for any *bond*, if the evidence of
" Bhola be true, that he brought the money from Rungloll's house?
" Phikoo would, no doubt, have prefered the money to the bond.
" The two remaining witnesses, Purboo and Adham Roy, produced
" by Rungloll, in support of his charge completely disprove it in
" every particular. The one was confined four, and the other three
" months

" months, in the same place with Rungloll, in the custody of Phikoo, " and each of them positively denies his knowledge of any one act " of cruelty or extortion, practised by Phikoo, or those under him, on " Rungloll or any other prisoner. If any such had taken place, it is " certain they must have known it. With the evidence of these two " witnesses, the very best that could be *called* to the point, which " they *disproved*, the case for the prosecution closed; and Phikoo " in his defence, produced four witnesses, who corroborated the " testimony given by these two.

" 35.—The cause thus ended, and the judge ordered the pro" ceedings to be forwarded to the kazee of the court, for his opinion. " The futwah of Mowlovie Mahomed Ekram is as follows:—' The " ' acts of oppression and cruelty practised by Phikoo, the defendant, " ' (for the purpose of taking bribes) on prisoners in his custody, be" ' fore conviction of the charge against them, appear upon the evi" ' dence of Sheconaut Naick and Bhyroo Naick, Mohun Kooar, " ' Buxy Munder, and Rungloll, who were the sufferers, and who " ' attended the court, and stated what they had deposed to former" ' ly; and which are corroborated by the evidence of Ajeet and " ' Bhayram, and Ooman Kooar, witnesses to the facts committed, " ' and also by the statements of Munnar Sing, Sheckh Peer Ally, " ' Oojea Roy, and Setaram, Bechoo Taccoor, Jhoomak Roy, and " ' Teerbhown Roy given before the former court; and the plea " ' made by Phikoo in excuse thereof, and which is this, that he was " ' compelled to those measures by Ramnarain, as appears from the " ' statement of some of the witnesses, who had also been sufferers, " ' cannot be admitted, nor received in extenuation of his crime, be" ' cause Phikoo was not Ramnarain's servant, that he should obey " ' him, even in acts illegal, especially when he was not without re" ' medy, as he could have represented such circumstances to his " ' superior, therefore the charge against him is proved, and he is li" ' able to punishment, and the nature of the punishment is left to the " ' discretion of the judge. God knows better. Dated 18th April " ' 1809. | *Mahomed Ekram.* | MAHOMED EKRAM.'

" 36.—The first observation, that occurs on this extraordinary " futwah, is, that of the eleven witnesses, who appeared for the pro" secution

" secution, it notices the evidence of three only, Ajeet, Bhyaram and " Ooman Kooar. The law officer sinks the evidence of Assa, which " compleatly destroys that of Ajeet, of Domun Sing, wholly at vari- " ance with the statement of Buxy Munder, which it was adduced " to support. He passes over the testimonies of Bhola, Munsa, Bhut- " ton Roy, Mahiput, Pherboo, and Adham Roy, of whom, the four " first contradicted the statement of Rungloll in many particulars, " and supported it in *none;* and the two last give evidence, which goes " directly to the acquittal of Phikoo. The evidence brought forward " by Phikoo, is also passed wholly unobserved: and in place of the " explicit and satisfactory defence of Phikoo, to each of the charges " the law officer inserts in his futwah, a plea supposed to have " been made by Phikoo, namely that he acted under the influ- " ence of Ramnarain, and declares the plea, to be inadmissible; a " plea which he found, not in the defence of the prisoner, but " in the perjured testimony of Rungloll, the complainant. I cannot " view this circumstance otherwise, than as a scandalous at- " tempt, on the part of the law officer of government, to mislead " his superiors; and to make it be believed by those, who may not " refer to the original proceedings, that Phikoo pleaded guilty and " threw himself on the mercy of the court; whereas, from the be- " ginning to the end of the trial, Phikoo stood upon his innocence, " and answered in a decided and manly way, and with great sim- " plicity, every charge which was brought against him.

" 37.—There remains to be noticed, another and perhaps a " still more indecent outrage on the principles of justice, and the " rules of legal proceeding, exhibited in this futwah of Mowlovie " Mahomed Ekram, kazee of the court of circuit, for the division of " Patna.—He not only suppresses all evidence in the cause, which " went in favor of the accused, but he urges against him, matter " wholly *out* of the cause, and which was just as legal evidence a- " gainst Mahomed Ekram, as against Phikoo. He presses into the " service, certain supposed statements of Munnar Sing, Sheckh Peer " Ally, Oojea Roy, Setaram, Beechoo Taccoor, Joomul Roy, and " Teerbhown Roy 'given before the former.' The 'former court' " was Mr. Smith, sitting as commissioner, on an *ex-parte* inquiry.

" The

"The 'statements' are the irregular, unattested, documents, *called* "depositions, taken before that gentleman, and not pretended to have "been given in the presence of Phikoo. Those illegal documents, "this law officer of government, has the audacity (for it cannot be "ignorance, which comparatively would be a defence) to state, in "his official opinion to the judge, to be evidence against Meer "Phikoo, to avow that they form a part of the evidence, on which "his futwah is grounded; on which the charge against Phikoo is "declared by him to be proved; and on which, the unfortunate "wretch has been condemned to an imprisonment of seven years.

"38.—In representing the above case to government, I have "done nothing more than discharge a common duty of humanity. "I however feel, that it is a case materially connected with the sub- "ject of my memorial to the honorable the court of directors, which "memorial has been hitherto delayed on account of the above pro- "ceedings, when I am informed of the event of my present appli- "cation for the revisal of those proceedings, it will be transmitted "to the honorable the vice president in council, for the purpose of "being forwarded to Europe.

"I have the honor to be, &c. &c.

(Signed) "A. SETON.

"ZILLAH SHAHABAD,
"*the* 14*th September*, 1809."

144.—In answer to this application, in the object of which, your memorialist had conceived nothing to be more nearly concerned than the credit and character of the government, to which it was submitted, he was honored with the following letter from their secretary, dated the 29th September 1809:

"TO

"*TO SIR A. SETON, BARONET.*

"SIR,

"Having laid before the honorable the vice president in council, "your letter of the 14th instant, I am directed to return it to you "enclosed, and to acquaint you that, agreeably to the constitution "established for the internal administration of this country, the exe"cutive government cannot interfere, with respect to any judg"ment passed by the established courts of judicature.

"I am Sir, &c.

(Signed) "G. DOWDESWELL,
"*Sec. to Govt.*

"COUNCIL CHAMBER,
"*the 29th September,* 1809."

145.—It will be remembered, that the judgment in question was given, not in a private suit at the instance of an individual prosecutor, but in a public prosecution, directed by government to be instituted, and carried on by their law officer and at their expence. In the statement of the proceedings on that occasion, as set forth by your memorialist in his letter to government, the conduct of one of their judicial officers, was deeply implicated. Injustice and illegality were imputed to his proceedings. Was it unfit, it may be asked, that some inquiry should be made into the grounds of the charge, and in this view, at least, did not the statement of your memorialist deserve some degree of attention from government? In refusing to *interfere*, as the vice president in council has been pleased to term it, in respect to the judgment

ment on Meer Phikoo, government appear to have imagined, that they were called upon to *reverse* that judgment, whilst in fact they were not even called upon to *revise* the proceedings, on which it was founded. It was only prayed, that they would refer them for that purpose, to the superior court.

146.—Your memorialist might indeed, have addressed himself directly to the court of nizamut adawlut, nor would he have conceived, that he thereby called upon them to violate any of the substantial rules, established for the administration of justice by that court. But it certainly occurred to your memorialist, that in *strictness of form*, some objections might be made by the nizamut adawlut, to act on your memorialist's application. They might certainly at least, have intrenched themselves as strongly as government, within "the constitution established "for the internal administration of the country." They might have said to your memorialist. Who are *you* in this cause? What right have *you* to intervene? Let the matter come regularly before us, as a court of error, on a proceeding instituted by the party aggrieved, and duly entered upon our records. Until then "the constitution established for the in-"ternal administration of this country, will not allow "us to *interfere*." In vain perhaps, might your memorialist have urged, that the wretch, who was suffering under this most iniquitous sentence, was at a distance of 400 miles, that he was without friends and without money, that he was in prison and in chains

chains. These, it might have been answered, are not topics to be addressed to a court of law.

147.—To the justice, humanity, and honorable feelings then, of the supreme government, it was, that your memorialist addressed himself, and addressed himself in vain He is far from wishing to insinuate, that any of the persons who compose that government (for all of whom he has great respect.) are individually deficient in any of those qualities. He believes very much the reverse of every one of them. But your memorialist cannot help thinking, that their decision in this instance, was guided in some degree by former prepossessions. *As* government, they had long ago prejudged the case of Phikoo; they had pronounced upon his guilt, on the *ex-parte* proceedings of Mr. Smith, and had sent him to his trial, loaded with the weight of that opinion publicly recorded, and promulgated. To this, your memorialist cannot but attribute much of the injustice, which Phikoo was doomed to meet with on his trial.

148.—The statement of those proceedings, made by your memorialist, might, as he submits, have given government occasion to consider, not merely the question, whether a revisal of those proceedings should be directed to take place, but also whether an inquiry should be ordered to be held into the conduct of the judge of circuit. On the latter point, your memorialist begs leave to observe, that no inquiry could take place into the "gross breach of duty" imputed to the

the second judge of circuit for the division of Patna, but by the *interference*, that is, the *order* of the governor general in council, under regulation 10th of 1806. That the conduct imputed to that judge, amounted to "a gross breach of duty" it is not difficult to shew. Passing over the proceedings during the trial, (from the beginning to the end illegal) let his conduct be considered, subsequent to the delivery of the futwah by the law officer, whose name, it is hoped, will not be forgotten, Mowlovie Mahomed Ekram, kazee of the court of circuit for the division of Patna.

149.—By section 47, of regulation 9th, of 1793, it is enacted, that when the futwah of the law officer, shall have been written at the end of the record of the proceedings, "the court shall attentively consider "such futwah, and if it shall appear to them consonant to natural justice, and also conformable to the "Mahomedan law, they are to pass sentence in the "terms of the futwah;" but by section 53, of the same regulation, "whenever the judges shall disapprove of "any part of the proceedings held on a trial, or of the "futwah delivered by the law officers, they are not to "pass sentence in such cases, but shall complete "the trial, and transmit to the nizamut adawlut, a "copy of all the proceedings, and the futwah," &c. Now what is the futwah of Mowlovie Mahomed Ekram, of which Mr. Hawkins not only did not disapprove, but to which he gave his direct approbation and sanction, by exercising in its utmost latitude and rigour, the right of discretionary punishment, alleged by

by the futwah, to be applicable to the case. This futwah is stated, on the face of it, to be grounded on a *part* only of the evidence, and that a part of the evidence for the prosecution, omitting all mention of the evidence for the prisoner, and of every part of the evidence for the prosecution, which happened to be favourable to him, not only passing over unnoticed the defence of the prisoner, but most artfully and insidiously suggesting one for him, which he never made. But this is not all: The same futwah of this law officer of the court of circuit, is expressed *in terms* to be founded moreover, on evidence, alleged to have been given several years before, on an *ex-parte* inquiry, at which the prisoner was not present, and where he had not even like others, a mock representative; or a man to see "fair play". as Mr. Smith was pleased to term it. Nay the very *form of* reading over to the prisoner, the pretended depositions, said to contain that evidence on that *ex-parte* inquiry, were not so much as gone through at the trial. In no sense then whatever, could those supposed depositions be said to form any part of Mr. Hawkins's legal or illegal proceedings: Yet Mr. Hawkins approved of the futwah, subjoined to the record of those proceedings, which futwah was declared to be founded, not merely on the evidence disclosed therein, but on *other* evidence, alleged to appear on some *other* proceedings, and which evidence neither in law, nor in justice, affected the prisoner any more than the Mowlovie or the judge, and of which it is not improbable, that one out of the three, that is the prisoner, had never heard.

150.—Either Mr. Hawkins did "attentively "consider" the futwah of the law officer, or he did not. If he did, and passed the sentence, which he passed on the authority of that futwah, "the breach "of duty" appears in its highest form. If he did *not* "attentively consider" the futwah, "the breach "of duty" will assume another shape, perhaps morally less culpable, but certainly not less dangerous or less reprehensible. How far in either case, the judge, who could pass such a sentence on such a futwah "is fit," (to borrow Mr. Smith's words, which *on this particular* occasion, he may perhaps not object to), "for that important and arduous situation, "is a question," your memorialist is incompetent to decide. "The decision of it rests with government." He will go no further than humbly to suggest, that it may appear to be a case, not wholly unfit to "be "submitted to the test of public investigation."

151.—With respect to the other point, whether the judgment passed upon Meer Phikoo, and the proceedings which led to it, were such, as called upon government to direct a revision of them by the superior court, your memorialist cannot see, that such a direction could have been deemed an *interference* with the course of public justice, any more, than it would be in England, if the King were pleased to command, in a public prosecution instituted by government, that a writ of error should be sued out, on a judgment given in the case in a court of law. But to consider it in another point of view, did not the

statement

statement of your memorialist contain matter, into the truth of which, it might not be unfit, that government should direct some inquiry to be made, with a view to ascertain whether it was a case, which called for the *interference* of the *clemency* of government. The clemency of the government of England, has often *interfered* in cases of unjust or mistaken verdicts given by juries, in matter of life or liberty. Your memorialist will take upon himself to say, that a more iniquitous verdict never was given by any jury, than that which Mowlovie Mahomed Ekram, who may be said to have been the jury on this occasion, delivered in his futwah, by which he declared the charge against Phikoo to be *proved.*

152—Notwithstanding the repulse, which your memorialist had thus met with from government, he conceived, that the duties of humanity called upon him to leave nothing unattempted, to obtain redress for an individual, suffering under the penalties of a most illegal and unjust judgment. He therefore addressed himself to the court of nizamut adawlut, who, to do them that justice, which your memorialist, notwithstanding every thing that has past, is happy to be enabled on this occasion to render them, have not availed themselves of any difficulties of form, to defeat the object of your memorialist's application. They have, as your memorialist has learnt, without pronouncing on the right of your memorialist to intervene in the case; declared, that his statement contained suffi-

cient objections to the legality and justice of the judgment, past upon Meer Phikoo, to induce them to call for the proceedings of the judge of circuit, and for any explanations, which he may have to give on the subject. The task of your memorialist is therefore at an end. The responsibility of reversing or confirming a sentence, given upon the grounds, and under the circumstances above detailed, now rests with that high judicial authority, and your memorialist fervently hopes, that the party, whose cause of complaint has thus reached them, may not suffer by the channel through which it has been conveyed.

153.—To bring to a conclusion this long Memorial, which your memorialist cannot but feel, much to need the indulgence of your honorable court, he humbly submits, that he might safely rest his case on this point; that the presumed grounds on which your memorialist was removed from his office in January 1808, have not been substantiated in January 1810; that the abuses and cruelties, alleged to have been committed, by the native officers in the jail of the district of Tirhoot, for having been ignorant of which, your memorialist was dismissed from the office of judge and magistrate of that zillah, and was thereby degraded in your honorable service, and in the opinion and estimation of the world, have not yet been *proved* to have had existence; and that as far as proceedings have been held for the purpose of ascertaining *facts*, their existence has been *disproved*. Even the illegal and unjustifiable proceedings of the judge of circuit, if

any

any faith whatever was to be given to them, prove only the corrupt receipt of a few rupees by Meer Phikoo, the foujdarry nazeer, whilst the charge of cruelty and oppression, the main-stay of the accusation, is not merely unsupported in any one instance, but directly negatived by the witnesses on both sides. To this may be added, a most singular circumstance, that with the exception of Phikoo, who had resigned his office two years before he was accused, the native officers, said to have been concerned in the alleged general system of corruption and oppression, for not having been apprized of which, your memorialist was removed from his office, were continued in the offices which they held under your memorialist.

154.—As far then, as your memorialist is personally concerned, he does not conceive himself to be much interested in opposing a doctrine, which he understands to have been some how or other insinuated, rather than directly propounded, namely, that the company's servants, in every situation, ought to be held answerable for the misconduct of their dependants. If such a doctrine were ever to be promulgated from authority, what English gentleman, let it be asked, who feels, that he possesses that, for the loss of which all the riches of India cannot compensate, would continue in a service, in which his character, fame and honor, would not be safe for one moment? That the doctrine in question, cannot be that of the present government of India, is evident, from their conduct in two instances, which have come before

them.

them. The one is the case of the commercial resident of Etyah, whose servants were convicted of malpractices. The governor general in council, in declaring *them* guilty of systematic abuses, throughout every department of the office, recorded, that he did not consider the gentleman in question, implicated in the corrupt practices of his servants. He was therefore declared reprehensible for negligence, (all that was ever *imputed*, and that which was never *proved* against your memorialist,) but no further censure or mark of displeasure followed on the part of government, against him. The other case was that of the judge and magistrate of Rajeshahy, whose native officers, were also accused of malpractices, and against whom a public prosecution was instituted, in the provincial court at the suit of government. Whilst this suit was pending, the right honorable the governor general in council, was pleased to *remove* that gentleman, from his office, by promoting him to the court of appeal and circuit, for the division of Calcutta. In this instance, therefore, government have most emphatically declared it to be their opinion, that persons holding judicial offices, are not to be considered responsible for acts of misconduct, committed without their knowledge, by their native officers, who, it is to be observed, are neither appointed, nor can be removed by them, who, by the regulations, hold their offices independent of their immediate superiors, and who, in effect, feel themselves perfectly secure from their censure or controul.

155.—The case of your memorialist is now fully before your honorable court, from whose justice and whose power, he seeks for, and confidently expects redress. He has submitted to them the nature of his wrongs: it is not for him to measure out the extent of their reparation. If however, it shall please your honorable court, to mark their sense of the merits of his case, by directing, that he be restored to the office, from which he was unjustly removed, he will respectfully and gratefully receive his re-appointment, as the most decisive and satisfactory vindication of his character to the world. In any other respect, it is a situation not much to be envied. The district of Tirhoot has never been remarkable for its subordination to legal authority. Your memorialist will venture to assert, that at the time when he was suspended from his office, it had been brought into a state of order and obedience to the law, until then unknown. But the affairs of that zillah have since, by a train of circumstances, (not the least operative of which, your memorialist considers to have been the triumph obtained by a band of outlaws, over the judicial character and authority in the person of your memorialist,) arrived at a crisis, from which, whosoever shall attempt to extricate them, must do it in the face of every obstacle, and surrounded by every difficulty, which native cunning, machination, and conspiracy, powerfully supported and abetted, can bring forward to oppose him. He must do it at the risk of every thing, which your memorialist has suffered from craft, malignity, and power.

156.—There remains one point to be adverted to, but which forms a very subordinate object of this appeal to your honorable court. It respects the injury, which, in point of fortune, your memorialist has sustained. In no other view, than as it may concern the service in general, does your memorialist venture to suggest, that the justice of the case may demand, that he should be allowed the emoluments of the office, from which he was removed, for the period during which, he was left unemployed by government, and that, from the time when he received his subsequent appointment, until that, at which the directions of your honorable court shall have been carried into effect, the difference between the emoluments of his former office, and those of the office which he now holds, should be made good to your memorialist. This, however, your memorialist repeats, is an object to him, comparatively of little moment. He seeks to wipe away the stain which has been cast upon his character, and will be satisfied with such a decision on his case, as shall prove to the world, that their exists in your honorable court, the will and the power to do justice to the servants of the company, and to afford them redress against the acts unjust, or mistaken, of their government in India.

A. SETON.

CALCUTTA,
*the 2d January,* 1810.

FINIS.

REFERENCE

# GLOSSARY

## OF

# THE PRINCIPAL ASIATIC TERMS,

### USED IN THE PRECEDING SHEETS.

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*Mohurrers*............................Native Writers.

*Duffadars*............................Officers, under the Head Constable.

*Nazeer*............................Head Constable :—Officer, who has the charge of Prisoners, and executes the Warrants of the Court.

*Foujdarry*............................Criminal Court.

*Dewanny*............................Civil Court.

*Cutcherry*............................Court House.

*Mohurrum*............................Mahomedan Festival.

*Moonshee*............................Persian Writer.

*Arzee*............................A written Representation, or Petition.

*Bungalow*............................A thatched Dwelling.

*Foujdarry Amla*............................Native Officers, attached to the Criminal Court.

*Vakeels*............................Native Pleaders.

*Thanadar, (alias Darogah)*............................Head Police Officer.

*Darogah*............................Head Native Office of the Criminal Court.

*Nazeer of the Dewanny Adawlut*...Head Constable, attached to the Civil Court.

*Shadiana*............................Musical Instrument.

*Pergunnah*............................Portion of a District.

*Sunnud*............................Diploma.

*Perwanna*............................Written Order from the Civil or Criminal Courts.

*Khootee*............................Banker's Shop.

*Nuzzer*............................A Present.

*Futwa*............................Mahomedon Law.

*Corah*............................A sort of Whip, about six feet in length.—In the Mogul Government, the sentence of 39 lashes of the Corah, was considered as equivalent to sentence of Death.